



STATE OF KANSAS

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September 21, 1978

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ATTORNEY GENERAL OPINION NO. 78- 299

Mr. Gary House
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Re: Alcoholic Liquor--Private Clubs--Closing Hours

Synopsis: Under K.S.A. 1977 Supp. 19-101a et seq., it is within the statutory authority of a county to prescribe reasonable closing hours for private clubs located therein which are licensed pursuant to the Kansas Private Club Act, K.S.A. 41-2601 et seq.

* * *

Dear Mr. House:

You advise that the board of county commissioners of Chautauqua County has recently adopted a resolution regulating the hours of operation of private clubs in that county, and you enclose a copy of that resolution. It prescribes the hours thus:

"Closing hours shall be from 12:01 A.M. to 9:00 o'clock A.M. of any day other than Sunday, said club to be closed on Sundays, and on election days during the times the polls are open."

The question has arisen whether the county is legally authorized to regulate the hours of private clubs licensed under K.S.A. 41-2601 et seq. K.S.A. 41-2614, of that act, states thus:

"No club licensed hereunder shall allow the serving, mixing or consumption of

alcoholic liquor on its premises between the hours of 3 a.m. and 9 a.m. on any day other than a Sunday nor between the hours of 3 a.m. and 12 noon on a Sunday."

In Leavenworth Club Owners Association v. Atchison, 208 Kan. 318, 492 P.2d 183 (1971), and in Blue Star Supper Club, Inc. v. City of Wichita, 208 Kan. 731, 495 P.2d 524 (1972), the court considered municipal ordinances which prescribed closing hours for private clubs. In the Leavenworth case, the city had adopted an ordinance which prohibited the serving, mixing or consumption of alcoholic liquor on the premises of private clubs after 1:30 a.m. The ordinance was challenged on the ground that it was in conflict with K.S.A. 41-2614, cited above, and in the Blue Star case, it was challenged on the additional ground that the ordinance was void under the preemptive provision of K.S.A. 41-208. The court rejected both arguments. The court took the view that although the legislature had prescribed hours during which the serving of alcoholic liquors in private clubs was prohibited, a city ordinance which imposed more restrictive closing hours, did not conflict with the statutory provision. Secondly, the court took the view that in K.S.A. 41-208, the state had not preempted local legislation dealing with the consumption of alcoholic liquors, and that the enactment of a municipal ordinance prescribing hours of operation was within the local police power of the city.

Since 1974, counties enjoy a substantial measure of local legislative power under K.S.A. 1977 Supp. 19-101a(a) which commences thus:

"Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties"

The cited cases establish that the state has not preempted the fixing of closing hours for private clubs licensed under K.S.A. 41-2601 et seq., and that the matter is an appropriate subject for the exercise of municipal police power. Under K.S.A. 1977 Supp. 19-101a, counties have equally broad police powers, to deal with local matters by the enactment of local legislation. Clearly, the matter of hours of operation of private clubs within the county is local in nature, and as Leavenworth and Blue Star demonstrate, the local police power may be exercised to regulate these hours. The powers of local legislation vested in counties under K.S.A. 1977 supp. 19-101a et seq. include the police power to deal with the matter.

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It is clear, in my judgment, that the county has the legal authority to regulate the hours of private clubs, a power equally as broad as that upheld in Blue Star and Leavenworth for municipalities. The second question arises, whether this resolution constitutes a reasonable exercise of that police power. In Leavenworth, the court upheld a city ordinance imposing a 1:30 a.m. closing hour, stating in part thus, in memorable language:

"We take judicial notice that Leavenworth is a city of the first class with a population exceeding 25,000 and with a military post of ancient and honorable lineage seated on its doorstep. The problems which arise from the serving of alcoholic beverages to thirsty patrons unto the wee hours of the morning may well be more numerous, more disturbing and more acute in Leavenworth than the problems encountered in more rural and placid communities.

If what we have sometimes heard is correct, conviviality tends to expand as the hours grow later and the bottle completes its rounds more often. The later it becomes in those precincts where spirituous drinks are purveyed and consumed, the greater may be the likelihood, it would seem logical to expect, that disturbances would develop and the long road home be fraught with greater peril.

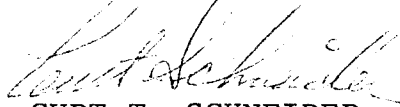
In our opinion, the ordinance in question is a valid and reasonable exercise of the police power. . . ." 208 Kan. at 322-323.

Certainly, the county may not act unreasonably in the fixing of closing hours for private clubs. It may not impose unreasonably restrictive hours which are not warranted by the considerations of the public peace and safety which the county seeks to protect by such restrictions. State law prohibits the sale of cereal malt beverages after 12:00 a.m. The county might have found that problems resulting from the serving of alcoholic liquor after that hour were sufficiently serious as to warrant a similar limitation. Questions of reasonableness are generally questions of mixed fact and law. We cannot conclude purely as a matter of law that the county has acted unreasonably in fixing 12:00 a.m. as the closing hour for private clubs located therein. It might be, of course, that club owners and operators could demonstrate, on a proper evidentiary showing, that the hours are indeed overly restrictive, that post-midnight operation has not in fact posed serious problems for county and city law enforcement. However, I cannot reach that conclusion purely as a matter of law. Such a showing, if it can be made, must be presented to a court of competent jurisdiction.

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To reiterate, it is my opinion, first, that it is within the legal authority of the county to prescribe closing hours for private clubs therein which are licensed under K.S.A. 41-2601 et seq., and secondly, that the reasonableness of a 12:00 a.m. closing limitation can be determined only by a court of competent jurisdiction, based upon an evidentiary presentation by both the county and the club owners and operators. Without the benefit of such factual information, I cannot conclude purely as a matter of law that the 12:00 a.m. closing hour imposed by this resolution is unreasonable, arbitrary and capricious.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:jj