



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 23, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79-186

Mr. Ray A. Neale
City Attorney
First National Bank
Coffeyville, Kansas 67337

Re: Intoxicating Liquors and Beverages--Prohibited
Acts--Times When Retail Sales Prohibited

Synopsis: The ordinance of the City of Coffeyville which prohibits retail sales of liquor at times not specified in K.S.A. 41-712 does not conflict with said statute, nor does such ordinance interfere with the jurisdiction of state agencies empowered to enforce Kansas liquor laws.

* * *

Dear Mr. Neale:

You ask for an opinion as to whether an ordinance of your city infringes or interferes with the jurisdiction of the Alcoholic Beverage Control Board of Review or the Alcoholic Beverage Control Division of the Kansas Department of Revenue.

The Coffeyville ordinance in question states:

"No person shall sell at retail any alcoholic liquor on the day of any national, state, county or city election including primary election and special elections, during the hours the polls are open within the polling area and in which such election is being held."

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The applicable Kansas statute governing days on which retail liquor stores must be closed is K.S.A. 41-712 which states, in pertinent part, as follows:

"No person shall sell at retail any alcoholic liquor: (1) On the day of any national, state, county or city election, including primary elections, during the hours the polls are open, within the political area in which such election is being held"

The statute governing city regulatory powers over alcoholic liquor matters is K.S.A. 41-208, which states thus:

"No city shall enact any ordinance in conflict with or contrary to the provisions of this Act and any ordinance of any city in effect at the time this Act takes effect or thereafter enacted which is in conflict with or contrary to the provisions of this Act shall be null and void."

By measuring the Coffeyville ordinance against these statutory provisions, it is apparent that your ordinance expands upon the restrictions of 41-712, by further prohibiting sales on days of "special elections," but does not conflict with the statute.

Municipalities may, in accord with two Kansas Supreme Court decisions, provide by city ordinance restrictions greater than the state has set forth. Both Leavenworth Club Owners Association v. Ralph Atchison, 208 Kan. 318 (1971) and Garten Enterprises v. City of Kansas City, Kansas, 219 Kan. 620 (1976), stand for such proposition.

"The fact the state has enacted legislation on a subject does not necessarily deprive a city of the power to deal with the same subject by ordinance; a field can be the subject of concurrent concern and legislation. A municipality may legislate on the same subject so long as the municipal ordinance does not conflict with state law." 219 Kan. at 620, Syl. para. 6.

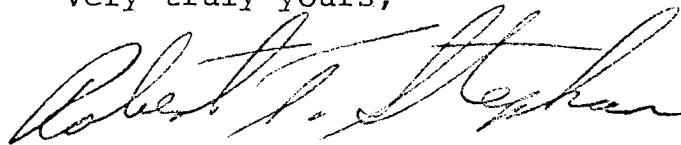
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"Where both statute and ordinance are prohibitory but the ordinance goes further than but not counter to the prohibition of the statute and the ordinance does not attempt to authorize what the statute forbids or forbid what the statute expressly licenses, authorizes or requires, there is nothing so contradictory between the provisions of statute and ordinance that the two cannot coexist."
208 Kan. at 318, Syl. para. 4.

In each of these cases, a city ordinance prescribed 1:30 A.M. closing hours for licensed clubs, as opposed to the state mandate of 3:00 A.M.; however, the court upheld such ordinances, since they were not in conflict with state statute, but simply placed an additional, reasonable prohibition on clubs under the city's jurisdiction pursuant to the city's inherent police powers.

Therefore, where a city has enacted an ordinance in a field of concurrent concern which does not conflict with state law, but goes further than the state prohibition, such ordinance is constitutional and does not interfere with the jurisdiction of state agencies empowered to enforce Kansas liquor laws. In our opinion, the ordinance of Coffeyville prompting your inquiry satisfies these requirements. It merely provides an additional day of closing, which is a proper exercise of the city's inherent police powers.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Robert E. Duncan, II
Assistant Attorney General

RTS:WRA:RED:gk