



STATE OF KANSAS

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ATTORNEY GENERAL

August 6, 1980

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ATTORNEY GENERAL OPINION NO. 80- 180

Philip C. Lacey
McPherson City Attorney
Municipal Center
400 East Kansas Avenue
McPherson, Kansas 67460

Re: Intoxicating Liquors and Beverages--Prohibited Acts
and Penalties--Consumption of Alcoholic Liquor in
Public Places

Synopsis: A city may exempt itself by charter ordinance from the provisions of K.S.A. 1979 Supp. 41-719, which prohibits consumption of alcoholic liquor in specified public places or places to which the general public has access. A city may exercise such home rule powers because K.S.A. 1979 Supp. 41-719 does not apply uniformly to all cities.

Consumption of alcoholic liquor on the premises of a private club licensed under the Private Club Act (K.S.A. 41-2601 et seq., and amendments thereto) is permitted only by members of such club and guests accompanying such members, and any consumption of alcoholic liquor in contravention thereof is cause for invoking the sanctions prescribed by the Private Club Act. Moreover, where persons who are not club members or guests of such club members, but who are members of the general public are admitted to a private club's premises, consumption of alcoholic liquor by such persons is proscribed by K.S.A. 1979 Supp. 41-719, since the club's premises have become a place to which the general public has access. Cited herein: K.S.A. 1979 Supp. 41-719, 41-2601, K.S.A. 41-2602, K.S.A. 1979 Supp. 41-2611, 41-2633, 41-2633a, Kan. Const., Art. 12, §5.

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Dear Mr. Lacey:

You have asked two questions regarding application of the statutes regulating the consumption of alcoholic beverages.

One of the questions you have posed is whether a city may adopt a charter ordinance exempting such city from the provisions of K.S.A. 1979 Supp. 41-719 and allowing consumption of alcoholic beverages under circumstances that would otherwise be prohibited under this statute. Subsection (a) of 41-719 prohibits the consumption of alcoholic liquor in specified public places or places "to which the general public has access." Subsections (b), (c) and (d), however, provide exceptions to such prohibition, including an exception in subsection (c) applicable to certain property of cities having populations in excess of 200,000. Subsection (e) declares any violation of the statute's prohibition to be a misdemeanor and imposes penalties applicable to persons convicted thereunder.

Essentially the same question you have raised regarding this statute was addressed by Attorney General Curt Schneider in Attorney General Opinion No. 78-286 (a copy of which is enclosed), wherein it was concluded that a city may exempt itself from the provisions of 41-719 by the adoption of a charter ordinance pursuant to the authority granted cities by Article 12, Section 5 of the Kansas Constitution. This opinion was predicated on the fact that the provisions of this statute are not uniformly applicable to cities, by virtue of the exception in subsection (c) noted above, thus permitting cities to exercise their home rule powers so as to exempt themselves from this statute's provisions.

In order to avoid unduly burdening this opinion by reiterating the rationale supporting the conclusion reached in Opinion No. 78-286, suffice it to state that we concur in that conclusion; and it is our opinion that a city may exempt itself by charter ordinance from the provisions of K.S.A. 1979 Supp. 41-719. However, we must respectfully decline comment as to the scope of a city's legislative authority to provide substitute or additional provisions in its charter ordinance that would permit consumption of alcoholic beverages under circumstances that would otherwise be proscribed by 41-719. You have not provided us with any specific proposal in this regard, and because of the existence of other statutory provisions regarding the consumption of alcoholic beverages (notably, K.S.A. 41-2602), we think it inappropriate to opine in the abstract regarding the scope of a city's legislative authority concerning consumption of alcoholic beverages.

The other question you have presented also concerns the consumption of alcoholic beverages. You indicate that from time to time in the City of McPherson, certain of the private clubs licensed under the

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provisions of K.S.A. 41-2601 et seq., and amendments thereto, lease the club's licensed premises to persons or organizations for the purpose of holding dances at which any member of the general public "who is of legal age" and who pays the admission fee is admitted. You also state that it is usually advertised "that persons attending the dance may bring their own alcoholic liquors with them," under the theory that, "because these dances are being held on the premises of a state-licensed private club, they are not being held in a place to which the general public has access, and consequently, alcoholic liquors can be consumed on the premises by persons attending [the] dances, even though the dances are open to the general public."

Based on the foregoing factual setting, you have requested our opinion "on whether a person present at a dance being held on the premises of a state-licensed private club, to which the general public is invited, would be violating . . . [K.S.A. 1979 Supp. 41-719] if such person were to consume alcoholic liquor at such dance." In formulating your request, you have offered your opinion that consumption of alcoholic liquor under the circumstances described above would, in fact, be unlawful.

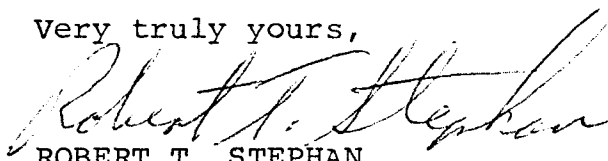
We concur in your opinion. In our judgment, there can be no question that consumption of alcoholic liquor under the circumstances you have described is consumption of alcoholic liquor at a place "to which the general public has access," within the proscription of K.S.A. 1979 Supp. 41-719. Although subsection (b) of K.S.A. 41-2602 permits consumption of alcoholic liquor at a club licensed by the director of alcoholic beverage control under the provisions of the Private Club Act, that provision does not permit unrestricted consumption of alcoholic liquor on a private club's premises. Only members of the club and guests accompanying such members are permitted to consume alcoholic liquor on a club's premises. See K.S.A. 1979 Supp. 41-2601(b) and 41-2637(a). Thus, when such premises are leased for use by persons other than club members and their guests, consumption of alcoholic liquor is not permitted. Any consumption in contradiction thereof is a violation of the Private Club Act, subjecting any violator to the penalties prescribed by K.S.A. 1979 Supp. 41-2633, as well as subjecting the private club to possible suspension or revocation of its license (K.S.A. 1979 Supp. 41-2611) and to other sanctions (K.S.A. 1979 Supp. 41-2633 and 41-2633a).

Additionally, when such premises are leased in a manner such as described in your letter of request, so as to permit members of the general public, such premises become a place to which the general public has access, and K.S.A. 1979 Supp. 41-719 prohibits consumption of alcoholic liquor under such circumstances. This is not to suggest, however, that a club's licensed premises cannot be leased to persons or organizations other than club members; but it is our opinion that when the premises are so leased, consumption of alcoholic liquor on the premises by such persons is not permissible.

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Therefore, it is our opinion that consumption of alcoholic liquor on the premises of a private club licensed under the provisions of K.S.A. 41-2601 et seq., and amendments thereto, is permitted only by members of such club and guests accompanying such members, and any consumption of alcoholic liquor in contravention thereof is cause for invoking the sanctions prescribed by the Private Club Act. Moreover, where persons who are not club members or guests of such club members, but who are members of the general public are admitted to a private club's premises, consumption of alcoholic liquor by such persons is proscribed by K.S.A. 1979 Supp. 41-719, since the club's premises have become a place to which the general public has access.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:phf
Enclosure