



STATE OF KANSAS

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February 3, 1981

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ATTORNEY GENERAL OPINION NO. 81-30_____

Edward C. Redmon
State Fire Marshal
Mills Building, Suite 203
109 W. 9th Street
Topeka, Kansas 66612

Re: Fire Protection--Fire Safety and Prevention--Investigations
Made by City Inspectors on State Property

Synopsis: As provided by K.S.A. 31-137, municipal fire departments are empowered to enforce the provisions of K.S.A. 31-132 et seq., as well as any rules and regulations adopted pursuant thereto. Such enforcement includes the making of inspections in and upon all buildings and premises subject to the act and, if necessary, the issuance of cease and desist orders. (K.S.A. 1980 Supp. 31-139). As buildings subject to the act include all places in which people work, live or congregate from time to time, [K.S.A. 1980 Supp. 31-133(a)], the Topeka State Hospital, as such a place, would be subject to inspection by officials of the Topeka Fire Department. However, the department would not be able to enforce any provisions inconsistent with the rules and regulations adopted by the state fire marshal. Cited herein: K.S.A. 1980 Supp. 31-133, 31-134, K.S.A. 31-137, K.S.A. 1980 Supp. 31-139, K.A.R. 1980 Supp. 22-3-1, K.A.R. 22-11-1.

* * *

Dear Mr. Redmon:

As Kansas state fire marshal, you have requested our opinion concerning the power of a municipal fire department to enforce fire safety code provisions on property owned by the State of Kansas. Specifically,

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you inform us that inspectors for the Topeka Fire Department recently conducted an inspection of the Topeka State Hospital buildings and grounds, and thereafter served notice of non-compliance upon the hospital administrator. While this situation has since been resolved to everyone's satisfaction, you would like to avoid any other potential conflicts, hence this opinion request.

Initially, it may be noted that it is the state fire marshal alone who is empowered to adopt the rules and regulations which are required to flesh out the bare bones of K.S.A. 31-132 et seq. [K.S.A. 1980 Supp. 31-133(a)]. The principal vehicle used for this purpose is the 1976 edition of the Life Safety Code, a nationally-recognized work which has been adopted by reference by K.A.R. 1980 Supp. 22-3-1. Chapter 10 of the Code refers to health care facilities, such as Topeka State Hospital, and sets out standards for occupancy, construction and methods of ingress and egress. Together with additional regulations which have been adopted separately for hospitals at K.A.R. 22-11-1 et seq., these regulations constitute the minimum requirements which facilities like Topeka State Hospital must meet.

Enforcement of the act, as well as the rules and regulations adopted pursuant to it, is delegated by K.S.A. 31-137 to the state fire marshal, his deputies, the chief of any organized fire department of any municipality or a duly authorized member thereof. Specific enforcement powers are set out at K.S.A. 1980 Supp. 31-139, wherein it is stated:

"The state fire marshal and those persons designated in K.S.A. 1972 Supp. 31-137 shall have the authority during all reasonable hours of operation to enter, in accordance with existing laws, in and upon all buildings and premises subject to this act for the purpose of examination, inspection and investigation to determine compliance with the rules and regulations promulgated under the authority of this act. Whenever the state fire marshal or any person designated in K.S.A. 1972 Supp. 31-137 finds any violation of this act or the act of which this section is amendatory, or of any of the rules or regulations issued thereunder, or any lawful order issued pursuant thereto, he may file a criminal complaint with the attorney general or the proper district or county attorney or he may issue an order to the owner or his agent to cease and desist such violations."

From the above, we note that no distinction is made as to the power of the state fire marshal or any of the others listed at K.S.A. 31-137,

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in that all are given equal authority as to making inspections in the course of seeking compliance. Neither is there any exemption made for property simply because it is owned by the state. Accordingly, it would seem that a municipality would be able to take the type of actions which occurred here and do so under the authority of state statute.

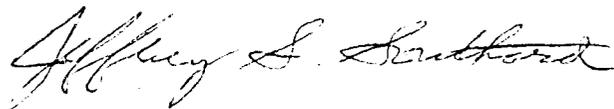
This is not to suggest, however, that state administrators and planners are faced with the prospect of complying with local, as well as state, fire prevention codes. Such a result is clearly precluded by the holding in State ex rel., Schneider v. City of Kansas City, 228 Kan. 25 (1980), where the court found that the city could not enforce its own codes over those of the state with regard to state property. As a result, compliance with the rules and regulations adopted by the state fire marshal is all that is required of any state building located in Kansas, and when local officials seek compliance as they did here, they are in effect acting as officials of the state. Of course, given this fact, it would be preferable if they acted in cooperation with your office in seeking compliance, i.e., joint inspections on a pre-arranged schedule. Schneider, supra, at 38.

In conclusion, as provided by K.S.A. 31-137, municipal fire departments are empowered to enforce the provisions of K.S.A. 31-132 et seq., as well as any rules and regulations adopted pursuant thereto. Such enforcement includes the making of inspections in and upon all buildings and premises subject to the act and, if necessary, the issuance of cease and desist orders. (K.S.A. 1980 Supp. 31-139). As buildings subject to the act include all places in which people work, live or congregate from time to time [K.S.A. 1980 Supp. 31-133(a)], the Topeka State Hospital, as such a place, would be subject to inspection by officials of the Topeka Fire Department. However, the department would not be able to enforce any provisions inconsistent with the rules and regulations adopted by the state fire marshal.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General