



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81-184

Mr. Dale W. Bell
Emporia City Attorney
City of Emporia Civic Building
519 Commerical, P.O. Box 921
Emporia, Kansas 66801

Re: Cities and Municipalities--Planning and Zoning--
City Regulation of Handicapped Parking

Synopsis: K.S.A. 12-709, which prohibits zoning ordinances from applying to the existing use of any building or land, will not prevent a city from requiring owners of parking lots to designate certain parking spaces for handicapped persons because such designation does not involve a change in "use." Cited herein: K.S.A. 12-709.

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Dear Mr. Bell:

You state that the City of Emporia is considering two proposed ordinances pertaining to provision of handicapped parking spaces and enforcement for unauthorized use of these spaces. The first ordinance would allow the Emporia Police Department to issue tickets for unauthorized use of handicapped parking in both public and private parking lots. The second ordinance would require a certain number of spaces be reserved for handicapped use in both public and private lots, based on the total number of parking spaces in the lot, and would amend current zoning regulations. You have raised no questions regarding the first ordinance and have asked only whether the second ordinance violates K.S.A. 12-709, which provides in pertinent part:

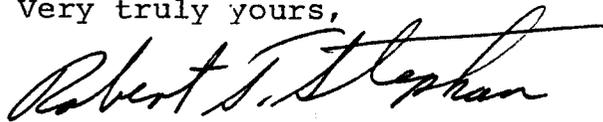
"Ordinances passed under the authority of this act shall not apply to the existing use of any building or land" (Emphasis added.)

Dale W. Bell
Page Two

From your letter, we assume that the proposed ordinance would not require buildings which have no parking lots at the present time to establish parking lots. Rather, we assume that the proposed ordinance would require that a certain number of parking spaces which are already used as parking spaces would be designated for use by a specific group of persons.

"Use" as it applies to real property has been defined by several courts. In American Sign Corp. v. Fowler, 276 S.W.2d 651, 654 (1955), the Kentucky court stated: "Zoning has as one of its main purposes, the regulation of 'use' of property. This means regulation of purpose or object of the use, rather than mere conditions or circumstances of the use." (Citation omitted; emphasis added.) An Iowa court interpreting the term in an urban renewal law defined "use" as meaning the activity conducted on the premises. Boss Hotels v. City of Des Moines, 141 N.W.2d 541, 543, 544 (1966). Since the proposed ordinance would permit properties which are already used as parking lots to continue as parking lots, in our opinion, no change in the existing "use" would occur if handicapped parking spaces were designated in such lots. Therefore, K.S.A. 12-709 would not prevent the proposed ordinance from being applicable to land which is already zoned.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:jm