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ATTORNEY GENERAL OPINION NO. 82-116

Mr. Stan Martin
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Re: Intoxicating Liquors and Beverages -- Prohibited Acts and Penalties -- Consumption of Alcoholic Beverages on Public Property

Synopsis: K.S.A. 41-719, which prohibits inter alia the consumption of alcoholic liquor on public property, is a legislative enactment which does not apply uniformly to all cities. Hence, a city to which this enactment applies may exempt itself by charter ordinance from the whole or any part thereof, and may also provide substitute or additional provisions, so as to permit consumption of alcoholic liquor on specified city property. However, the consumption of alcoholic liquor on such property remains subject to the limitations of the Private Club Act (K.S.A. 41-2601 et seq.), which has as its purpose the regulation and control of all consumption of alcoholic liquor by any person in this state. Thus, where a charter ordinance exempts a city from the prohibitions of K.S.A. 41-719, but authorizes consumption of alcoholic liquor on city property in a manner which is in conflict with the Private Club Act, such conflicting provisions are invalid. Accordingly, the provisions of Herington's Charter Ordinance No. 8 which authorize consumption of alcoholic liquor in the Herington Community Building irrespective of whether the general public has access are invalid since they contravene the limitations prescribed by the Private Club Act. Cited herein: K.S.A. 41-719, 41-2601, 41-2602, 41-2604, 41-2609, 41-2615, 41-2623, Kan. Const., Art. 12, §5.

* * *

Dear Mr. Martin:

As city attorney for the City of Herington, Kansas, you have requested our opinion as to the validity of Herington's Charter Ordinance No. 8, which exempts the city from the provisions of K.S.A. 41-719(a) and adopts substitute provisions in lieu thereof. The effect of this ordinance, as provided in section 2 thereof, is to permit the consumption of alcoholic liquor in the Herington Community Building, the title to which is vested in the City of Herington, and such consumption would be allowed "whether or not the general public has access, and whether or not an admission or other fee is charged or collected."

A city's authority to exempt itself by charter ordinance from the application of a particular statutory enactment is provided by the cities' home rule amendment to the Kansas Constitution (Kan. Const., Art. 12, §5). This amendment empowers cities "to determine their local affairs and government," and such determination is subject only to specified legislative enactments. Subsection (c)(1) of the home rule amendment authorizes a city to adopt a charter ordinance removing the city from the application of "the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness." Subsection (c)(2) also provides that a charter ordinance "may provide substitute and additional provisions on the same subject." Thus, the validity of a charter ordinance must be measured against these constitutional requirements.

As noted earlier, Herington's Charter Ordinance No. 8 exempts the city from certain provisions of K.S.A. 41-719, which provides as follows:

> "(a) Except as provided in subsection (b), no person shall drink or consume alcoholic liquor upon the public streets, alleys, roads or highways; in beer parlors, taverns, pool halls or places to which the general public has access, whether or not an admission or other fee is charged or collected; upon property owned by the state or any governmental subdivision thereof; or inside vehicles while upon the public streets, alleys, roads or highways.
>
> "(b) The provisions of subsection (a) shall not apply to the drinking or consumption of alcoholic liquor:

"(1) Upon real property leased by a city to others under the provisions of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, if such property is actually being used for hotel or motel purposes or purposes incidental thereto.

"(2) In any state owned or operated building or structure and upon the surrounding premises which are furnished to and occupied by any state officer or employee as a residence.

"(3) In a club which is licensed by the director and which is located upon property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated.

"(4) In a club which is licensed by the director and which is located upon property owned or operated by an airport authority established by a city having a population of more than 200,000.

"(5) Upon property exempted from the provisions of subsection (a) pursuant to subsection (c) or (d).

"(c) Any city having a population of more than 200,000 may exempt, by ordinance, specified property, title of which is vested in such city, from the provisions of subsection (a).

"(d) The board of county commissioners of any county having a population of not less than 150,000 may exempt, by resolution, specified property, the title of which is vested in such county, from the provisions of subsection (a).

"(e) Violation of any provision of subsection (a) is a misdemeanor punishable by a fine of not less than $50 or more than $200 or by imprisonment for not more than six months, or both."

Although Charter Ordinance No. 8 concerns itself with the provisions of K.S.A. 41-719(a), we have quoted this statute in its entirety, to illustrate that, while K.S.A. 41-719 is applicable to all cities in the state, its applicability is not uniform. In particular, subsection (c) authorizes cities having a population of more than 200,000 to exempt city-owned

property from the proscriptions of subsection (a), a power not vested in other cities by this statute. Hence, the non-uniformity of the legislative enactment, which is a prerequisite to a charter ordinance, clearly exists.

A second issue is whether consumption of alcoholic liquor is a proper subject of legislation for a city's governing body, i.e., it must be determined whether the subject matter of Charter Ordinance No. 8 may be regarded as a "local affair" of the City of Herington.

In our judgment, the fact that K.S.A. 41-719 specifically permits certain cities to legislate on the consumption of alcoholic liquor in public places and places to which the general public has access indicates that the legislature regards these matters as proper subjects for local legislation. Several decisions of the Kansas Supreme Court also acknowledge the power of cities to legislate regarding the consumption of alcoholic liquor. For example, the decisions in Leavenworth Club Owners Assn. v. Atchison, 208 Kan. 318 (1971), and Blue Star Supper Club v. City of Wichita, 208 Kan. 731 (1972), recognized that city ordinances pertaining to the consumption of alcoholic beverages were not preempted by enactment of the legislature, and the respective ordinances considered in these cases were upheld as valid exercises of a city's police power.

Moreover, with regard to the question of preemption, we believe the following excerpt from City of Junction City v. Griffin, 227 Kan. 332 (1980), clarifies the limitations on the legislature's ability to preempt action by cities:

> "The court has consistently rejected the doctrine of implied preemption of a particular field. Legislative intent to reserve exclusive jurisdiction to regulate in an area must be clearly manifested by State law. City of Lyons v. Suttle, 209 Kan. 735, 738, 498 P.2d 9 (1972); City of Junction City v. Lee, 216 Kan. 495, 503, 532 P.2d 1292 (1975); Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, Syl. ¶3, 549 P.2d 864 (1976). Legislative intent to preempt a field is only the first of two requirements for preemption when it concerns the rights of cities.
>
> ". . . The second requirement is uniform application of the State law to all cities.

> "The grant of home rule power to cities under Article 12, §5 of the Kansas Constitution has therefore added a new dimension to be considered in determining whether the legislature has occupied a field. Legislative intent to preempt a field is alone insufficient. It is now necessary to examine the provisions of the State enactment to determine whether the constitutional standard of uniform application to cities has been met. If not uniform, legislative intent as expressed within the enactment will not overcome the constitutional requirement for uniform application. Clark v. City of Overland Park, 226 Kan. 609, 602 P.2d 1292 (1979). The legislature may preempt the constitutional powers of cities only in the manner prescribed in the constitution. 'As between the will of the people expressed in the constitution, and that expressed in the statute, the former always prevails.' State, ex rel. Goodin v. Thoman, 10 Kan. 191, 197 (1872).
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> . . . .
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> "So, even if a legislative enactment by the State addresses a matter which may be considered of statewide concern, a city remains free to take legislative action by charter ordinance concerning that same matter unless the legislative enactment by the State applies uniformly to all cities. Regardless of whether an enactment of the State legislature addresses a matter of statewide or a matter of local concern, a city may in either case act by charter ordinance to exempt itself from all or part of the enactment unless the State enactment applies uniformly to all cities. Kan. Const. art. 12, §5(c)(1). The legislature may foreclose municipal legislative action only by an enactment of uniform application to all cities." Id. at 336, 337.

Thus, even though the consumption of alcoholic liquor on public property and property to which the general public has access may be regarded as matters of statewide concern, K.S.A. 41-719 is nonuniform in its application to all cities of this state, thereby permitting municipal legislation on these matters through the adoption of charter ordinances.

The remaining issue presented by your request is whether the provisions of Herington's Charter Ordinance No. 8, although not precluded under the Kansas Liquor Control Act, may be

in conflict with the Private Club Act (K.S.A. 41-2601 et seq.). You indicate that agents of the Division of Alcoholic Beverage Control of the State Department of Revenue have advised that, notwithstanding Charter Ordinance No. 8, consumption of alcoholic beverages at gatherings in the Herington Community Building to which the general public has access is in violation of the Private Club Act. While Herington's charter ordinance has exempted the city from certain provisions of K.S.A. 41-719(a), the ordinance does not address the Private Club Act. Thus, it must be determined whether the provisions of this act regulate or control the consumption of alcoholic beverages in the Herington Community Building.

Resolution of this issue requires a determination of legislative intent, which is the fundamental requirement of statutory construction, to which all others are subordinate. Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357, 367 (1978). The Court also has provided guidance in ascertaining the legislature's intent, and we believe the following statement of the Court to be of importance here:

> "A primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to the obvious purpose the court should follow the intent as expressed by the words used and is not warranted in looking beyond them in search of some other legislative purpose or extending the meaning beyond the plain terms of the Act. (Alter v. Johnson, 127 Kan. 443, 273 Pac. 474; Hand v. Board of Education, 198 Kan. 460, 426 P.2d 124; City of Overland Park v. Nikias, 209 Kan. 643, 498 P.2d 56; Hunter v. Haun, 210 Kan. 11, 499 P.2d 1087.)" City of Kiowa v. Central Telephone & Utilities Corporation, 213 Kan. 169, 176 (1973).

Furthermore, it is well established that, in determining legislative intent, statutes in pari materia should be construed together so as to harmonize their respective provisions, if reasonably possible to do so [Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973)], and statutes need not be enacted at the same time in order to be regarded as in pari materia. Claflin v. Walsh, 212 Kan. 1, 8 (1973). We believe these principles compel a conjunctive construction of K.S.A. 41-719 and the Private Club Act.

It was recognized by the Court in Blue Star Supper Club v. City of Wichita, supra at 733, 734, that both K.S.A. 41-719

and the Private Club Act regulate and control the consumption of alcoholic beverages. Moreover, there is a clear legislative intent to coordinate the provisions of the Private Club Act with those of the Liquor Control Act, of which K.S.A. 41-719 is an integral part. For example, in K.S.A. 41-2601(a), certain words and terms used in the Private Club Act are given the respective meanings provided them in the Liquor Control Act, and various other sections of the Private Club Act incorporate by reference certain requirements of the Liquor Control Act (e.g., K.S.A. 41-2609, 41-2615 and 41-2623). Hence, we believe K.S.A. 41-719 and the sections of the Private Club Act must be construed together as statutes in pari materia, so as to harmonize and reconcile their respective provisions, if reasonably possible to do so [Callaway v. City of Overland Park, supra], and so that all may be given full force and effect within their intended field and scope of operation. Marshall v. Marshall, 159 Kan. 602, 606 (1945).

When the Private Club Act was enacted in 1965 (L. 1965, ch. 316), the only prohibition regarding the consumption of alcoholic liquor was found in K.S.A. 41-719, which had been enacted in 1949 as section 82 of the Liquor Control Act (L. 1949, ch. 242). At the time the Private Club Act took effect, there were no exceptions to the prohibition in K.S.A. 41-719 regarding alcoholic beverage consumption on public property. It is within this context, then, that we must consider the legislative purpose underlying the Private Club Act, since it is essential in determining legislative intent to consider statutes in existence at the time of a statute's enactment. Motor Equipment Co. v. Winters, 146 Kan. 127 (1937). Legislative intent must be determined with reference to the situation and existing conditions at the time of enactment. State, ex rel., v. Murphy, 183 Kan. 698, 702 (1958). And as noted in Callaway v. City of Overland Park, supra, "[t]he historical background and changes made in a statute are to be considered by the court in determining legislative intent for the purpose of statutory construction."

We also find pertinent the following statement of the Court in Rogers v. Shanahan, 221 Kan. 221 (1977):

> "It is presumed the legislature had and acted with full knowledge and information as to the subject matter of the statute, as to prior and existing law and legislation on the subject of the statute and as to the judicial decisions with respect to such prior and existing law and legislation." Id. at 225.

Moreover, "'any changes and additions made in existing legislation raise a presumption that a change in meaning and

effect is intended.'" (Emphasis added.) Shapiro v. Kansas Public Employees Retirement System, 211 Kan. 452, 456 (1973), quoting Curless v. Board of County Commissioners, 197 Kan. 580 (1966). Certainly, the enactment of the Private Club Act must be regarded as a supplementary addition to the Liquor Control Act. Hence, we must presume that the Private Club Act was enacted with the legislature's full knowledge that K.S.A. 41-719 proscribed consumption of alcoholic beverages on public property, and that a change in the existing law was intended.

With these principles in mind, we have examined the various provisions of the Private Club Act to determine its underlying purpose. One section of that act having obvious pertinence to our consideration is K.S.A. 41-2602, which provides as follows:

> "The consumption of alcoholic liquor by any person shall be authorized in this state:
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> "(a) Upon private property by those occupying such private property as an owner or as the lessee of an owner and by the guests of said owner or lessee provided that no charge is made by the owner of lessee for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance comixed with any alcoholic liquor; and if no sale of alcoholic liquor in violation of K.S.A. 41-803 takes place on said private property;
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> "(b) at a club licensed by the director under the provisions of this act;
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> "(c) in a lodging room of any hotel, motel or boarding house by the occupant of said lodging room or his guests provided the occupant is not engaged in a sale of liquor in violation of K.S.A. 41-803; and if the occupant makes no charge for (1) serving or mixing any drink or drinks of alcoholic liquor, or (2) for any substance comixed with any alcoholic liquor;
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> "(d) in a private dining room of a hotel, motel or restaurant when said dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 takes place at said private party."

In conjunction with this section, we also have considered K.S.A. 41-2604, which states:

> "Any person allowing consumption of alcoholic liquor in violation of this act on any property owned, leased or otherwise under his control shall thereby subject himself and the property on which said illegal consumption takes place to the penalties hereinafter provided.
>
> "(a) The person allowing such consumption shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed five hundred dollars ($500) or confinement in the county jail not to exceed six (6) months or both such fine and imprisonment.
>
> "(b) The property on which the violation takes place is declared to be a public nuisance and as such is subject to abatement as provided for any other liquor nuisance in K.S.A. 41-805."

Here, several important observations must be made. First, neither of the foregoing statutes have been amended since they were enacted. Hence, we must conclude that the legislative purpose prompting their enactment has remained unchanged.

A second observation is that, unlike K.S.A. 41-719 as it existed when the Private Club Act was enacted, the Private Club Act does not constitute an absolute prohibition as to the consumption of alcoholic beverages. Rather, K.S.A. 41-2602 enumerates the places and conditions under which such consumption is authorized, and K.S.A. 41-2604, in effect, prohibits all consumption of alcoholic beverages which is not in conformity with the parameters prescribed by K.S.A. 41-2602.

Amplifying the foregoing is the fact that the Private Club Act has the obvious purpose of regulating all consumption of alcoholic liquor. This is abundantly clear from the provisions of K.S.A. 41-2602 and 41-2604 quoted above. The former statute begins by declaring that "[t]he consumption of alcoholic liquor by any person shall be authorized in this state" (emphasis added), and then defines the limits of such authorized consumption. Thus, it is apparent the legislature intended to proscribe and penalize any consumption of alcoholic liquor which exceeds these limits. Such purpose is in perfect harmony with the provisions of K.S.A. 41-719 as it

was constituted in 1965, since that section contained an unqualified prohibition regarding consumption of alcoholic beverages on public property. Nothing in the then existing version of that statute mitigates the underlying purpose of the Private Club Act to regulate all authorized consumption of alcoholic liquor.

The question then arises as to whether the subsequent amendments to K.S.A. 41-719 have altered this legislative scheme. In our judgment, these amendments preserve the integrity of the Private Club Act in regulating all authorized consumption of alcoholic beverages. We again note that subsection (a) of K.S.A. 41-719 prohibits consumption of alcoholic liquor in particular places, including "property owned by the state or any governmental subdivision thereof." Subsection (b), however, provides that "[t]he provisions of subsection (a) shall not apply to the drinking or consumption of alcoholic liquor" on the various properties specified in paragraphs (1) through (5) of this subsection. It is important to recognize that the only effect produced by this subsection is to remove these properties from the prohibition in subsection (a). Nothing in subsection (b), or elsewhere in K.S.A. 41-719, for that matter, authorizes the consumption of alcoholic beverages. The only legislative pronouncement permitting such consumption is found in K.S.A. 41-2602. Thus, in our judgment, even though the properties specified in subsection (b) are no longer subject to the restraints of subsection (a), consumption of alcoholic beverages on these properties is subject to regulation and control under the Private Club Act, and we believe this is precisely what the legislature intended.

The various paragraphs of K.S.A. 41-719(b) support this conclusion. In fact, paragraphs (1), (2), (3) and (4) manifest a legislative intent that consumption of alcoholic beverages on the various properties specified therein be subject to the Private Club Act. Paragraph (1) addresses a situation where a hotel or motel is situated on particular public property; paragraph (2) deals with residences of state officers and employees which are situated on public property; and paragraphs (3) and (4) address situations where private clubs licensed under the Private Club Act are located on specified public property. Clearly, were it not for the fact that these premises and facilities are situated on public property, consumption of alcoholic beverages thereon would be authorized and regulated under the Private Club Act. The character and use of these premises and facilities are essentially private in nature. Thus, it is readily apparent that the only purpose for these four paragraphs is to remove the prohibition regarding consumption of alcoholic beverages on public property, so that such consumption will be authorized in accordance with the limitations of the Private Club Act.

We also find the intent underlying K.S.A. 41-719(b)(5), the remaining exception to the provisions of K.S.A. 41-719(a), to be consistent with the purpose of the other four exceptions. Paragraph (5) exempts from the provisions of subsection (a) those public properties specifically designated either by ordinance of a city having a population of more than 200,000 or by resolution of a county having a population of not less than 150,000. Here, again, we believe the only purpose of this paragaph is to remove these public properties from the constraints of subsection (a). We reiterate that nothing in this paragraph or elsewhere in K.S.A. 41-719 indicates that the legislature's intent was to remove all statutory restraints concerning consumption of alcoholic beverages on these properties. To the contrary, from the time the Private Club Act was enacted in 1965 there has existed an obvious legislative intent to coordinate the provisions of that act with the Liquor Control Act. Nothing in paragraph (5) of K.S.A. 41-719(b) detracts from that purpose. That paragraph does not authorize unrestrained consumption of alcoholic beverages on the specified local government property; it merely removes such property from the restraints of subsection (a), thereby permitting consumption of alcoholic beverages on such property, but only in accordance with the Private Club Act.

Before proceeding, it is appropriate to restate the necessity of effectuating the legislature's intent. Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., supra. In ascertaining the purpose of a statute susceptible of more than one construction, it is essential to consider the effect the statute may have under the various possible constructions. State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. ¶10 (1974). Thus, were we to conclude that the exemption of public property from the constraints of K.S.A. 41-719(a) afforded unrestrained consumption of alcoholic beverages on such property, we would attribute to the legislature an intent that consumption of alcoholic beverages on private property be subject to greater restraint than on public property. We find nothing in the pertinent statutes which reflects such an intent, and to give effect thereto would produce unreasonable and absurd results and contravene all established rules of statutory construction. "It is a cardinal rule of statutory construction that the legislature intended a statute be given a reasonable construction so as to avoid unreasonable and absurd consequences." Williams v. Board of Education, 198 Kan. 115, 125 (1967), and cases cited therein.

Accordingly, we have concluded that the effect of K.S.A. 41-719(b) is merely the exemption of the various public properties specified therein from the constraints of K.S.A. 41-719(a), but consumption of alcoholic beverages on these

properties remains subject to regulation and control under the Private Club Act. And that also is precisely the legal effect of Herington's Charter Ordinance No. 8.

The governing body of Herington has accomplished for its Community Building by charter ordinance what the legislature has done statutorily for property specified by ordinance of any city having a population of more than 200,000--it has exempted the Herington Community Building from the restraints of K.S.A. 41-719(a). However, just as the various exemptions in K.S.A. 41-719(b) do not have the effect of providing unrestrained consumption of alcoholic beverages on the public properties specified therein, neither does Herington's charter ordinance have the effect of permitting unrestrained consumption of alcoholic beverages in the Herington Community Building. From its inception, the Private Club Act has provided the only authority for the consumption of alcoholic beverages, and as we previously stated there is an express legislative intent that the provisions of that act apply throughout the state. K.S.A. 41-719 has never authorized such consumption; it has only prohibited it. Thus, just as the only effect produced by the exemptions set forth in K.S.A. 41-719(b) is to remove the properties from the constraints of subsection (a), thereby permitting consumption of alcoholic beverages on such properties in accordance with the Private Club Act, the only result of a city's charter ordinance which exempts the city from the provisions of K.S.A. 41-719(a) is to remove the city from the constraints of that statute, thereby permitting consumption of alcoholic beverages on city property specified in the ordinance in accordance with the provisions of the Private Club Act.

Therefore, consumption of alcoholic beverages in the Herington Community Building must comport with the limitations of the Private Club Act, specifically the provisions of K.S.A. 41-2602. We note, of course, that the limitations of this statute are couched in the context of private property. This is understandable, since consumption of alcoholic beverages on public property was absolutely prohibited at the time this section was enacted, and as we noted previously, it has not been amended. However, because of the obvious legislative intent expressed by the provisions of K.S.A. 41-719(b) that the provisions of the Private Club Act be made applicable to public property which has been exempted from the restraints of K.S.A. 41-719(a), we are compelled to construe K.S.A. 41-2602 so as to give force and effect to that intent. As stated in Brown v. Keill, 224 Kan. 195 (1978):

> "The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs

> when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. (Farm & City Ins. Co. v. American Standard Ins. Co., 220 Kan. 325, Syl. ¶3, 552 P.2d 1363 [1976].) In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested. (State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. ¶10, 527 P.2d 1340 [1974].) In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the literal import of words or phrases which conflict with the manifest purpose of the legislature. (Kansas Commission on Civil Rights v. Howard, 218 Kan. 248, Syl. ¶2, 544 P.2d 791 [1975].)" Id. at 199, 200.

By application of these well-accepted rules of statutory construction to the provisions of K.S.A. 41-2602, it is our opinion that consumption of alcoholic beverages in the Herington Community Building must comport with the limitations of subsection (a) of that statute. That is, such consumption is limited to private gatherings. Assuming that a private club, hotel, motel or restaurant will not be located on the premises of this building, consumption of alcoholic liquor on these premises is limited to situations where the premises are leased to an individual or organization, and only the lessee and guests of the lessee may drink or consume alcoholic beverages, "provided that no charge is made . . . by the lessee for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance comixed with any alcoholic liquor; and if no sale of alcoholic liquor in violation of K.S.A. 41-803 take place." K.S.A. 41-2602(a).

It is obvious that such restrictions are in conflict with the provisions of Herington's Charter Ordinance No. 8 which purport to authorize consumption of alcoholic liquor in the

Herington Community Building "whether or not the general public has access." Accordingly, it is our opinion that these provisions are of no force or effect. By authorizing what the Private Club Act prohibits, the Herington ordinance is in conflict with these statutes, and the ordinance must yield. City of Junction City v. Lee, 216 Kan. 495, 501 (1975). Thus, even though Herington's Charter Ordinance No. 8 is a valid exercise of the city's home rule power to exempt itself from a legislative enactment (K.S.A. 41-719) which applies to such city, but does not apply uniformly to all cities, those provisions of the ordinance which authorize consumption of alcoholic liquor in contravention of the Private Club Act are invalid.

In summary, therefore, it is our opinion that K.S.A. 41-719, which prohibits inter alia the consumption of alcoholic liquor on public property, is a legislative enactment which does not apply uniformly to all cities. Hence, a city to which this enactment applies may exempt itself by charter ordinance from the whole or any part thereof, and may also provide substitute or additional provisions, so as to permit consumption of alcoholic liquor on specified city property. However, the consumption of alcoholic liquor on such property remains subject to the limitations of the Private Club Act (K.S.A. 41-2601 et seq.), which has as its purpose the regulation and control of all consumption of alcoholic liquor by any person in this state. Thus, where a charter ordinance exempts a city from the prohibitions of K.S.A. 41-719, but authorizes consumption of alcoholic liquor on city property in a manner which is in conflict with the Private Club Act, such conflicting provisions are invalid. Accordingly, the provisions of Herington's Charter Ordiance No. 8 which authorize consumption of alcoholic liquor in the Herington Community Building irrespective of whether the general public has access are invalid since they contravene the limitations prescribed by the Private Club Act.

Very truly yours,

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