



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 35

Ivan D. Krug  
Rush County Attorney  
711 Main Street  
LaCrosse, Kansas 67548

Re: Counties and County Officers -- County Buildings --  
Acquisition; Leasing

Intoxicating Liquors and Beverages -- Certain Pro-  
hibited Acts and Penalties -- Consumption of Liquor  
in Public Places

Synopsis: A county commission may, pursuant to K.S.A. 19-15,114 et seq., acquire a public building by purchase when it determines that such public building is necessary to be used for any public county purpose. General obligation bonds may be issued to furnish the funds for such acquisition, provided that if the amount of the bonds exceeds \$300,000, approval of the voters must be obtained through a special election. While K.S.A. 19-212, First, and K.S.A. 19-15,117 authorize a county commission to permit the use of county buildings for other than public purposes, the consumption of alcoholic liquor in public places is regulated by K.S.A. 41-719, with that statute prohibiting such consumption upon property owned by a governmental subdivision of the state such as a county. However, in that the provisions of K.S.A. 41-719 are non-uniform in their application, a county may, under its home rule authority (K.S.A. 19-101 et seq.), charter out from the provisions of K.S.A. 41-719. While consumption of alcoholic liquor is still subject to the provisions of K.S.A. 41-2602, the operation of a licensed private club in the leased premises would comply with the statute and avoid a

violation of the ban on the operation of an open saloon. Cited herein: K.S.A. 19-212; 19-15,114; 19-15,115; K.S.A. 1984 Supp. 19-15,116; K.S.A. 19-15,117; 41-719; 41-803; 41-2602; Kan. Const. Art. 15, §10.

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Dear Mr. Krug:

As County Attorney for Rush County, Kansas, you request our opinion on a question concerning the acquisition by the county of a building which is now owned by the local veterans organization. Specifically, the veterans organization has approached the county commission with a proposal for the county to acquire title to the organization's building, which could be used for a variety of public uses. The veterans wish to retain the right to use the building for their regular functions, which includes meetings and the operation of a bar and restaurant. You inform us that, as a non-profit group, the organization has a Class A private club license pursuant to K.S.A. 41-2601 et seq.

Initially, we would note that the ability of the county to acquire property for public uses is a broad one, as set forth by K.S.A. 19-15,114 et seq. K.S.A. 19-15,115 states in part that "[t]he board of county commissioners of any county may when it deems it necessary erect or construct, acquired by gift, purchase, condemnation in fee simple or lease, a public building or buildings." The term "public building" is defined by K.S.A. 19-15,114(a) to include any building which the board of county commissioners determines to be necessary to the county for any public county purpose. K.S.A. 1984 Supp. 19-15,116 further provides for various methods of funding such acquisitions, one of which involves the issuance of general obligation bonds of the county [at subsection (c)]. As long as the amount of bonds does not exceed \$300,000, the question of bond issuance does not have to be submitted to a public vote. We would also call your attention to the language of subsection (h) of the statute, which allows various methods to be combined, such as general obligation bonds and general fund moneys.

Under the facts you present, it appears that the building in question will be used for a variety of county purposes, therefore providing the county commission with a basis for determining that acquisition of the structure would serve a necessary purpose. However, you also indicate that one of the conditions for transfer to the county would allow the veterans organization to continue to use the facilities for its activities. The ability of a county to lease public buildings to private persons is

established by K.S.A. 19-15,117, which permits the leasing of all or part of such buildings for those times that the building is not required for county purposes. Subject to the provision that each lease be for no longer than one year, the county in this case would be able to lease part of the building to the veterans association for its activities. Given that most, if not all, of these activities would occur after the close of business each day, the county could reasonably find that the building was not needed for county purposes at those times.

A separate problem is presented by the fact that the veterans organization wishes to retain its private club privileges. The statutes of relevance here are K.S.A. 41-719 and 41-2602. The former deals with public places in which alcoholic liquor may be consumed, while the latter concerns consumption in general. On its face, K.S.A. 41-719 would appear to preclude the consumption of liquor in county buildings, for the general prohibition against consumption in subsection (a) includes "property owned by the state or any governmental subdivision," which would include Rush County. While subsection (d) allows certain counties to exempt specified property by resolution from the provisions of subsection (a), such authority is limited to counties having a population in excess of 150,000, i.e. Shawnee, Johnson, Sedgwick and Wyandotte. Therefore, neither subsection (d) nor any of the other exceptions to subsection (a) found in the statute would apply to Rush County.

However, because the statute does contain a number of exceptions to the general rule, under the authority granted to Rush County by K.S.A. 19-101a et seq., the county commission may exercise home rule authority to charter out from under the general prohibitions found in K.S.A. 41-719. This result was previously reached in Attorney General Opinion No. 82-116, which concluded that the City of Herington could exercise city home rule power to provide substitute provisions for the terms of K.S.A. 41-719. Although county home rule authority differs in some respects from that given to cities, in our opinion the non-uniformity of K.S.A. 41-719 leads to the same result here as in the prior opinion, namely that the county may permit the consumption of alcoholic liquor in county-owned property through a charter ordinance.

At this point it should be noted that even though Opinion No. 82-116 concluded that K.S.A. 41-719 was non-uniform, the city was still precluded from permitting the consumption of alcoholic liquor in a city building as has been planned. This was due to the provisions of K.S.A. 41-2602, which is contained in the Private Club Act and which limits the manner in which liquor can

be consumed in this state. The statute as it now reads limits consumption to the following circumstances:

"(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 or 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;

"(b) at a club licensed by the director under the provisions of this act;

"(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;

"(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 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."

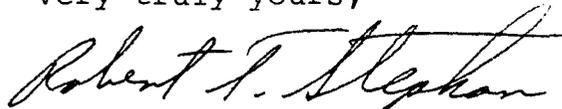
Since the City of Herington did not meet any of the above conditions, the opinion properly concluded that the consumption of liquor in the city building would constitute an open saloon of the type prohibited by the Kansas Constitution (Article 15, Section 10) and the statutes (K.S.A. 41-803).

The situation in LaCrosse is fundamentally different from that in Herington, however, due to the fact that the veterans organization is already the holder of a Class A private club license. Access by the general public is accordingly limited, thus avoiding the problem of an open saloon. Just as a social club which leases the county building at certain times could close its activities to the general public, so can the veterans organization limit participation at its functions to members and

their guests. As long as consumption of liquor is limited to that portion of the facility leased by the veterans organization and at the times the organization is actually using the premises, K.S.A. 41-2602 will be complied with, along with the constitutional and statutory bans on the operation of an open saloon.

In conclusion, a county commission may, pursuant to K.S.A. 19-15,114 et seq, may acquire a public building by purchase when it determines that such public building is necessary to be used for any public county purpose. General obligation bonds may be issued to furnish the funds for such acquisition, provided that if the amount of the bonds exceeds \$300,000, approval of the voters must be obtained through a special election. While K.S.A. 19-212, First, and K.S.A. 19-15,117 authorize a county commission to permit the use of county buildings for other than public purposes, the consumption of alcoholic liquor in public places is regulated by K.S.A. 41-719, with that statute prohibiting such consumption upon property owned by a governmental subdivision of the state such as a county. However, in that the provisions of K.S.A. 41-719 are non-uniform in their application, a county may, under its home rule authority (K.S.A. 19-101 et seq.), charter out from the provisions of K.S.A. 41-719. While consumption of alcoholic liquor is still subject to the provisions of K.S.A. 41-2602, the operation of a licensed private club in the leased premises would comply with the statute and avoid a violation of the ban on the operation of an open saloon.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Deputy Attorney General