



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 30, 1986

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 86- 81

Robert F. Bennett
Bennett, Lytle, Wetzler,
Winn & Martin
5100 West 95th Street
Prairie Village, Kansas 66208-0030

Re: Fire Protection--Fire Safety and Prevention--
School Buildings

Synopsis: The City of Lenexa may not condition the grant of a building permit to a school upon compliance with its building codes, as they have been preempted by K.S.A. 1985 Supp. 31-150. (Attorney General Opinion No. 80-14 is affirmed.) Cited herein: K.S.A. 1985 Supp. 31-150.

* * *

Dear Mr. Bennett:

You request our opinion as to whether a city wherein a school building is to be located may require a school district, which has complied with the provisions of K.S.A. 1985 Supp. 31-150, to comply with city building codes which are more restrictive than the aforesaid statute.

K.S.A. 1985 Supp. 31-150 prescribes building codes which apply to the construction of school buildings throughout the state, and provides as follows:

"(a) Except as otherwise provided in subsection (b), the construction of school buildings shall comply with the

requirements of the 1982 edition of the uniform building code, volume I, and the 1982 edition of the uniform mechanical code of the international conference of building officials. All electric wiring shall conform to requirements of the 1981 issue of the national electric code of the national fire protection association. Minimum plumbing requirements shall meet the 1982 edition of the uniform plumbing code issued by the international association of plumbing and mechanical officials.

"(b) The construction of mobile, modular, portable or relocatable school buildings shall conform to the requirements of the 1981 edition of the life safety code as adopted by the national fire protection association. Minimum plumbing requirements shall meet the 1982 edition of the uniform plumbing code issued by the international association of plumbing and mechanical officials.

"(c) The construction of all school buildings shall include reasonable provision for making buildings and facilities accessible to, and usable by, the physically handicapped, as approved by the state board of education.

"(d) No contract shall be let for the construction of any school building, and it shall be illegal to pay out any public funds for the construction of a school building until the plans for such building shall: (1) Bear the seal of an architect or a professional engineer licensed by the state board of technical professions of the state of Kansas certifying that the plans meet the applicable requirements of this act; and (2) be submitted to the state board of education for approval as to compliance with such requirements.

"(e) The provisions of subsection (c) and (d) of this section shall not apply to any

building or structure operated or used for any purpose by, or located upon the land of any institution under the control and supervision of the state board of regents.

"(f) The relocation of school buildings to which the provisions of subsection (b) apply shall not be construed to be construction or reconstruction under the provisions, or for the purposes, of this section.

"(g) The construction or reconstruction of any school building to which the provisions of this section were applicable prior to July 1, 1984, shall be governed by the provisions of this section which were in effect on the date the contract for such construction or reconstruction was entered into."

In Attorney General Opinion No. 80-14 (copy enclosed), we concluded that the above-quoted statute preempted the field as far as the regulation of school building construction is concerned, and that city building codes are not applicable to construction of school buildings.

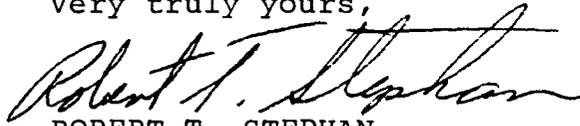
Six months after the above-cited opinion was written, the Kansas Supreme Court ruled that the Kansas Board of Regents was not subject to the building permit and building code ordinances of Kansas City for construction of a radiation therapy facility on the campus of the Kansas University Medical Center. State ex rel. Schneider v. City of Kansas City, 228 Kan. 25 (1980). Although the Schneider case was limited to the parties and factual situation before the court (Id. at 33), the following excerpt from the opinion supports the conclusion reached in Attorney General Opinion No. 80-14:

"In the construction of state buildings, the area of school construction appears to be the only one in which the legislature has mandated statewide compliance with specific building codes. The adoption by the state legislature of comprehensive building codes would indicate that the legislature considers the construction of schools to be one of statewide importance

as opposed to the local affairs of a municipality in seeking to control construction within its city limits." 228 Kan. at 32.

In accordance with the above-quoted authorities, it is our opinion that the city of Lenexa may not condition the grant of a building permit to a school upon compliance with its building codes, as they have been preempted by K.S.A. 1985 Supp. 31-150.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm
Enclosure