



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 132

The Honorable Edward F. Reilly, Jr.  
State Senator, Third District  
430 Delaware  
Leavenworth, Kansas 66048-2733

Re: Constitution of the State of Kansas--Corporations--  
Cities' Powers of Home Rule

Synopsis: Kansas cities have authority under the police power and article 12, section 5 of the Kansas Constitution to regulate the drilling of oil wells within their corporate limits. In our judgment, an ordinance which prohibits drilling within one thousand feet of a residential building, or which prohibits placement of a tank for storage of crude oil within the limits of a city, is not unreasonable or arbitrary, and does not deprive landowners of their property without due process of law. Cited herein: Kan. Const., Art. 12, §5.

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Dear Senator Reilly:

You request our opinion concerning ordinances of the city of Leavenworth and Lansing which regulate the drilling of oil wells within the territorial limits of the subject cities. Specifically, you question the validity of a provision which prohibits drilling within one thousand feet of a residential building, and a provision which prohibits placement of a tank for storage of crude oil within the limits of the city.

Cities in this state have authority to regulate the drilling of oil wells within their corporate limits pursuant to the police power and article 12, section 5 of the Kansas Constitution (the city home rule amendment). In Marrs v. City of Oxford, 32 F.2d 134 (8th Cir. 1929) an ordinance restricting the drilling and operation of gas and oil wells within the city of Oxford was challenged. The court, in upholding the ordinance, stated as follows:

"The police power is an attribute of sovereignty to be exercised for the public welfare, and it has been authoritatively said: 'The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community.' Also, 'that all contract and property rights are held subject to' a fair exercise of the police power. '\* \* \* And it is well settled that the enforcement of uncompensated obedience to a legitimate regulation established under the police power is not a taking of property without compensation, or without due process of law, in the sense of the Fourteenth Amendment. . . .' Necessarily these regulations will encroach, when the power is exercised, on private rights; but that does not render them void. The power has its limitations and when submitted for judicial review it must appear that its exercise appropriately affords protection to the public against threatened evils. Arbitrary and unreasonable regulations, clearly ineffective in accomplishment of the claimed public interest, will be stayed; but the presumption is in favor of a law or ordinance passed in the exercise of the power, until the contrary is shown." 32 F.2d at 139 (citations omitted).

In regard to the reasonableness of regulations restricting drilling, the court in Marrs stated as follows:

"[I]t seems undeniable to us that when work of the kind under consideration is carried on in residential or business sections of a town or city without some limit to the number of wells in a given area, they will necessarily become nuisances of a most aggravated sort to its inhabitants and its business interests. There will be annoyance from unsightly structures, disquieting noises of machinery, the immediate and constant presence of numbers of workmen and the persistent thought of impending danger from explosion and conflagration because of the highly inflammable nature of the product. Such a situation calls for some governmental restriction and control. The greater the number of wells in a city block the greater will be the annoyance and hazard to the public. Indeed, it would be hard to say that an ordinance prohibiting the drilling and operation of any well within the business or residential districts of a city would be an unreasonable and invalid exercise of the police power." 32 F.2d at 139-140.

In accordance with the above-quoted authority, it is our opinion that a city may prohibit oil and gas activity within its territorial limits when reasonably related to protecting the public health, safety, and welfare. In this regard, we are unable to conclude that the above-referenced regulations of the city of Leavenworth and the city of Lansing are unreasonable or arbitrary, or that they deprive landowners of their property without due process of law.

Very truly yours,



ROBERT T. STEPHAN  
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