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ATTORNEY GENERAL OPINION NO. 88-140

Dr. Lyle E. Boyles
Superintendent of Schools
Board of Education, U.S.D. #402
301 W. Kelley St.
Augusta, Kansas 67010

Re: Schools -- Miscellaneous Provisions -- Use of
Tobacco Products in Public School Buildings
Prohibited

Synopsis: Users of tobacco products and boards of education are both regulated by L. 1988, Ch. 229, § 1. Individuals may not use tobacco products in school buildings, and boards of education may not allow the use of tobacco products in school buildings. School buildings are defined by the act as enclosed structures, and do not include buildings used for residences or buildings leased by boards for non-school sponsored activities. The prohibition does not extend to school grounds which are not school buildings. Cited herein: K.S.A. 1987 Supp. 21-4009; K.S.A. 72-8205, 72-8211, 72-8212, 72-8225; L. 1988, Ch. 229, § 1 (to be codified at K.S.A. 72-53,107).

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Dear Dr. Boyles:

As Superintendent of Schools, U.S.D. No. 402, you have requested our opinion regarding L. 1988, Ch. 229, sec. 1 (to be codified at K.S.A. 72-53,107) which prohibits the use of tobacco products in public school buildings. Specifically,

you inquire whether there are exceptions to be the act, and whether the prohibition applies outside of school buildings.

Prior to July 1, 1987, the use of tobacco products in school buildings had been left to local school board regulation. With the adoption of K.S.A. 1987 Supp. 21-4009, et seq., smoking is prohibited in public places, which includes educational facilities, unless an area is designated as a smoking area. Subject to local regulation, the person in charge has discretion in designating any percentage of the premises as a smoking area. See Attorney General Opinion No. 87-89. This discretion is now limited, however, by Chapter 229, which states in relevant part:

"The use of tobacco products in any school building is hereby prohibited. No board of education of any school district shall allow any person to use tobacco products in any school building." L. 1988, Ch. 229, § 1(a).

Chapter 229 therefore regulates tobacco users and school boards. Further, the law applies to use of tobacco products in general, and is not limited to smoking. The purpose of the act is to address the "hypocrisy of curriculum in schools which teach the detrimental effects of tobacco consumption, then offer a designated smoking area for teachers and on some occasions for students." Minutes, House Committee on Public Health and Welfare, page 1, February 18, 1988.

Chapter 229 prohibits the use of tobacco products in school buildings. School buildings are defined as

"any enclosed building used for pupil attendance purposes by the board of education of a unified school district. The term school building does not include a building, or part thereof, used for residential purposes or leased from the school district for non-school sponsored activities." L. 1988, Ch. 229, § 1(b).


There are no exceptions to the prohibition, however some structures are excluded from the definition of school building. First, an enclosed building used for residential purposes, or a part of a building so used, is not a school building within the meaning of the act. For example, boards of education of unified school districts are authorized to

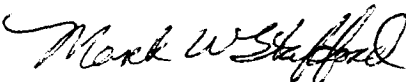
maintain teacherages for faculty living quarters. K.S.A. 72-8211. It would appear that a teacherage is not a school building for purposes of chapter 229, whether the teacherage is a separate structure or is part of a structure used for pupil attendance purposes. Secondly, if a board leases a structure or part of a structure to another for non-school sponsored activities, then that structure is not a school building for purposes of chapter 229. Boards are authorized to enter into contracts as lessors of property by K.S.A. 72-8225.

Regarding your second question, the statute only speaks to enclosed buildings. No mention is made of school property other than school buildings. This issue was discussed by conferees appearing before the House Committee on Public Health and Welfare. See Committee Minutes, February 18, 1988, Attachments No. 3, 8 and 10. While the committee did clarify the definition of a school building, it did not expand the prohibition to include all school grounds. This is a matter still within a school board's authority. See K.S.A. 72-8205(c), 72-8212(d).

In conclusion, it is our opinion that users of tobacco products and boards of education are both regulated by L. 1988, Ch. 229, § 1. Individuals may not use tobacco products in school buildings, and boards of education may not allow the use of tobacco products in school buildings. School buildings are defined by the act as enclosed buildings, and do not include buildings used for residences or buildings leased by boards for non-school sponsored activities. The prohibition does not extend to school grounds which are not school buildings.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mark W. Stafford
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