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ATTORNEY GENERAL OPINION NO. 89- 6

The Honorable David J. Heinemann
State Representative, One Hundred Twenty-Third District
State Capitol, Room 170-W
Topeka, Kansas 66612

Re: Contracts and Promises--Regulation of Pawnbrokers
and Precious Metal Dealers--Report of Property
Pledged or Purchased

Synopsis: Section 5-514 of the Dodge City Municipal Code prescribes that pawnbrokers shall obtain the right thumb print of any person pledging or selling personal property, except where the pawnbroker personally knows such person by correct name. In our opinion, this requirement does not violate the constitutional rights of the pawnbroker or his customers. Cited herein: K.S.A. 16-706; 16-715; U.S. Const., Fifth and Fourteenth Amend.

* * *

Dear Representative Heinemann:

You request our opinion as to the validity of section 5-514 of the Dodge City Municipal Code. Specifically, you ask whether the city of Dodge City may constitutionally require pawnbrokers to obtain the right thumb print of any person pledging or selling personal property.

K.S.A. 16-706 et seq. provide for the regulation of pawnbrokers and precious metal dealers, with K.S.A. 16-715 requiring pawnbrokers to make reports describing property pledged or purchased. Subsection (c) of the last cited statute states that all property reports shall comply with and

be submitted in accordance with the terms of any applicable city ordinances.

Section 5-514 of the Dodge City Municipal Code requires pawnbrokers to file property reports as follows:

"(a) It shall be the further duty of every pawnbroker and every precious metal dealer, on a form provided by the police department, to report legibly the description of all property received in pledge or purchased. Such report shall include all property purchased as secondhand merchandise at wholesale, secondhand merchandise taken in for sale or possessed on consignment for sale, secondhand merchandise taken in trade and merchandise which the pledger uses as collateral for the loan of money. This report shall also include information to positively identify the pledger or seller. In addition to the information required by section 5-513, this form shall bear the right thumb print of the person from whom the property was received or purchased. The thumb print shall be taken in the usual, approved manner and shall not be blurred or obliterated, provided, however, no thumb print shall be required if the dealer or buyer shall personally know, by correct name, the person from whom the property is received. No such report need be made concerning property or merchandise acquired from another pawnbroker or precious metal dealer licensed in this state in a transaction involving the purchase or other acquisition from the other pawnbroker or precious metal dealer of the other pawnbroker's or dealer's stock in trade, or a substantial thereof in bulk, where the other pawnbroker has made the reports required by this section with respect to such property or merchandise.

"(b) Reports made pursuant to this section will be collected daily by an employee of the police department. The reports collected will be those made during the preceding calendar day of

business. These reports shall only be available to law enforcement officers and city and county attorneys and then only for law enforcement purposes."

In City of Wichita v. Wolkow, 110 Kan. 127 (1921), the Kansas Supreme Court considered the constitutionality of a Wichita ordinance which required that pawnbrokers take thumb prints of persons from whom property was received or purchased. In rejecting arguments that the ordinance violated the Fifth and Fourteenth Amendments to the United States Constitution, the Court stated as follows:

"It has become recognized by the business world and by the courts that pawnbrokers and secondhand dealers have an occasion to deal with so many who have small regard for the criminal law and are actual receivers of stolen goods that for the benefit of the public somewhat severe restrictions are justified. . . .

"While the requirements of this ordinance may work considerable inconvenience to those engaged in secondhand business, the good intended to be accomplished is so manifest that the court does not feel authorized to declare the ordinance arbitrary or unreasonable. The changing needs of advancing civilization, as well as the growing acuteness and sagacity of those fatally bent on mischief alike require more legislative restrictions than may have been necessary in more simple times. All citizens within reasonable limits must help bear the burden that present conditions make requisite for the public welfare.

"'Dealers in junk and secondhand articles are subject to rigid control and regulations for several reasons. First, like pawnbrokers, they are constantly receiving stolen goods, either innocently or otherwise. Second, they are very apt to gather together a mass of inflammable matter in combustible buildings. Third, they frequently have in their possession clothing and other articles infected with disease.' (19 R.C.L. 862).

"When property is stolen for the purpose of disposition, the guilty party who sells it can find so many methods of evading and avoiding detection and arrest that for the sake of property owners and the enforcement of criminal law those whose business naturally and necessarily includes transactions with such lawless persons may reasonably be required to use the safeguards provided by this ordinance, and by so doing they are not deprived of any right vouchsafed to them under the state or federal constitution." 110 Kan. at 128, 129.

In a more recent case, the United States District Court for the District of Kansas recognized that pawnbrokers and precious metals' dealers provide a marketplace for stolen goods, and that state regulation of such businesses was a valid exercise of the police power. Joe Flynn Rare Coins Inc. v. Stephan, 526 F.Supp. 1275 (1981).

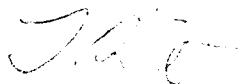
While state statutes do not provide for taking thumb prints, such fact has no bearing upon the validity of the Dodge City ordinance. In this regard, it is well established that a city may by ordinance extend regulation beyond the limits of general state statutes dealing with the same subjects (except where the legislature has clearly preempted the field). Leavenworth Club Owners Association v. Atchison, 208 Kan. 318, 322 (1971).

In our judgment, the conclusion reached in the Wolkow case retains its efficacy. Accordingly, it is our opinion that section 5-514 of the Dodge City Municipal Code, which requires pawnbrokers to obtain the right thumb print of persons pledging or selling personal property, does not violate the constitutional rights of a pawnbroker or his customers.

Very truly yours,



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