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ATTORNEY GENERAL OPINION NO. 92- 33

Charles W. Mavity, Jr., Chairman
Leroy Wasmund
Gardner Hayden
Franklin County Board of Commissioners
Ottawa, Kansas 66067

Re: Counties and County Officers -- County
Commissioners -- Powers of Board of Commissioners

Crimes and Punishments -- Crimes Involving
Violations of Personal Rights -- Smoking in a
Public Place

Synopsis: The board of county commissioners has the authority
to designate and decide which areas of the
courthouse, except those used for judicial
functions, are to be smoking areas. Cited herein:
K.S.A. 19-104; K.S.A. 1991 Supp. 19-212; K.S.A.
21-4009; 21-4010; 20-4011.

* * *

Dear Chairman Mavity:

On behalf of the Franklin county board of commissioners you
have requested our opinion as to whether the board of county
commissioners can declare the entire courthouse to be a smoke
free area.

The board of county commissioners has the authority:

"[T]o make such orders concerning the property belonging to the county as they may deem expedient, including the establishing of regulations, by resolution, as to the use of such property and to prescribe penalties for violations thereof. . . .

"[T]o represent the county and have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law." K.S.A. 1991 Supp. 19-212.

These are the general rules governing the authority of the county commissioners to control and care for county property. However, there are also some specific rules regarding smoking in public places.

K.S.A. 21-4009 prohibits smoking in a public place. Public place is defined as any:

"[E]nclosed indoor areas open to the public or used by the general public including but not limited to: Restaurants, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, educational facilities, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities." K.S.A. 21-4009.

"Smoking areas may be designated by proprietors or other persons in charge of public places . . . where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas." K.S.A. 21-4010. The proprietor or person in charge of the public place has the authority to decide the area(s) which shall be a smoking area pursuant to K.S.A. 21-4011. Therefore, under these statutes the proprietor or person in charge has the authority to decide which, if any, areas will be designated as a smoking area.

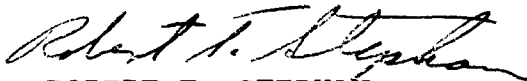
Obviously, pursuant to K.S.A. 21-4009, courtrooms and county or municipal buildings are defined as a public place and therefore it is up to the proprietor or person in charge of such buildings to decide whether these areas or any part thereof should be designated as smoking areas. Therefore, we need to determine who is the proprietor or person in charge of a county courthouse to determine if the county commissioners have the authority to designate the entire county courthouse a smoke-free building.

K.S.A. 19-104 speaks to county buildings and states that:

"[E]ach county organized for judicial purposes shall, at its own expense, provide a suitable courthouse and a suitable and sufficient jail, and fireproof offices and other necessary county buildings, and keep the same in repair."

This language would lead to the conclusion that the courthouse is a county building and since "the care for the courthouse as a building is generally a function of the appropriate administrative authority; although the use of the courthouse or courtroom for the performance of judicial functions is generally within the control of the court," 20 Am.Jur.2d Courts § 39 (1965), the board of county commissioners would have the authority decide and designate which area or areas of the courthouse except those that are used for judicial functions are to be a smoking area and make sure such areas have appropriate physical barriers and ventilation systems. It should also be noted that K.S.A. 21-4013 authorizes cities or counties to enact more stringent non-smoking policies than those imposed by state statutes.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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