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September 22, 2015

ATTORNEY GENERAL OPINION NO. 2015- 16

The Honorable Jim Denning
State Senator, 8th District
8416 W. 115th St.
Overland Park, KS 66210

Re: Fire Protection—Fire Safety and Prevention—Fire Safety and Prevention;
School Buildings; Construction, Reconstruction or Renovation
Requirements; Building Plans, Certification; Rules and Regulations

Synopsis: State law preempts local building and electric codes for school buildings
as a matter of statewide concern. A city may not condition the grant of a
building permit for a school building on compliance with local building
codes. Cited herein: Kan. Const. Art. 12, §5; K.S.A. 2015 Supp. 31-150.

* * *

Dear Senator Denning:

As Senator for the 8th District and on behalf of the Shawnee Mission School District, you ask our opinion on whether a school district may be required by a municipality to comply with city-adopted fire and electric wiring codes rather than statewide codes.

Specifically, you ask whether the State has “preempted the field in the area of fire code and electric wiring code compliance” and whether cities may “condition the grant of a building permit to a school upon compliance with its city-adopted building codes.” For the sake of clarity, we will address each question separately.

State preemption of building and electric code compliance for school buildings

The home rule amendment to the Kansas Constitution¹ took effect in 1961, empowering cities to determine their local affairs except in certain circumstances: “The legislature retains power over statewide matters. Hence, home rule power does not authorize cities to act where the state legislature has precluded municipal action by clearly preempting the field with a uniformly applicable enactment.”²

The Kansas legislature has imposed minimum requirements on the building and safety standards for school buildings:

“Except as otherwise provided in this section, the construction . . . of school buildings shall comply with the requirements of the 2000 edition of the international building code as published by the international codes council. All electric wiring shall conform to requirements of the 1999 issue of the national electric code of the national fire protection association.”³

State law allows the State Fire Marshal to update those codes through the promulgation of rules and regulations,⁴ and the editions that now apply are the International Building Code, 2006 edition⁵ and National Fire Protection Association Standard No. 70, 2008 edition.⁶

The question remains whether a city may impose different or stricter building codes than those imposed by K.S.A. 2015 Supp. 31-150.⁷ We conclude that it may not.

We first note that K.S.A. 2015 Supp. 31-150(a) is a statute of uniform applicability. We continue to assume, without deciding, that ensuring a minimum standard of safety in school buildings is a matter of statewide concern.⁸ K.S.A. 2015 Supp. 31-150(a) therefore preempts local regulation under either of the first two exceptions to the home rule authority: “enactments of the legislature of statewide concern applicable uniformly to all cities, [and] to other enactments of the legislature applicable uniformly to all cities.”⁹

¹ Kan. Const. Art. 12, § 5

² *Kansas City Renaissance Festival Corp. v. City of Bonner Springs*, 269 Kan. 670, 673 (2000).

³ K.S.A. 2015 Supp. 31-150(a).

⁴ K.S.A. 2015 Supp. 31-150(g).

⁵ K.A.R. 22-18-3(a).

⁶ K.A.R. 22-1-3(n).

⁷ Although your opinion request appears to draw a distinction between building and fire codes, we will use the term “building codes” to refer to both building and fire codes.

⁸ See *State ex rel. Schneider v. City of Kansas City*, 228 Kan. 25, 32 (1980) (“The adoption by the state legislature of comprehensive building codes would indicate that the legislature considers the construction of schools to be [an area] of statewide importance”).

⁹ Kan. Const. Art. 12, § 5(b).

Because the legislature has enacted a rule that does not qualify for local determination, a city may not impose building codes on a school building.

Conditions for granting a building permit

You also ask whether a city may condition the grant of a building permit on compliance with local building codes. As you acknowledged in your opinion request, Attorney General Opinion No. 86-81 concluded “the city of Lenexa may not condition the grant of a building permit to a school upon compliance with [the city’s] building codes.” We can find no court cases or statutory amendments that would make us question affirming the analysis or conclusion made in Attorney General Opinion No. 86-81.

Because we affirm Attorney General Opinion No. 86-81, we conclude the answer to your question remains “no”—a city may not condition the grant of a building permit on compliance with local building codes.

In conclusion, the state has preempted local building and electrical codes for the construction of school buildings, and as a result a city may not condition the grant of a building permit on compliance with local building or electrical codes.

Sincerely,

Derek Schmidt
Kansas Attorney General

Craig Paschang
Assistant Attorney General

DS:AA:CP:sb