

*City of
Fire Protection*



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

September 3, 1974

Opinion No. 74-305

Mr. R. L. Fraley
Chief Fire Inspector
Wichita Fire Department
Third and Water Streets
Wichita, Kansas 67202

Dear Mr Fraley:

Your recent letter has been referred to me for reply.

The state fire marshal is charged by K.S.A. 31-133 with adopting reasonable rules and regulations for the safeguarding of life and property from the hazard of fire. K.S.A. 31-133 provides in part:

"The state fire marshal shall adopt reasonable rules and regulations, consistent with the provisions of this act, for the safeguarding of life and property from the hazards of fire and explosion."

Under this authority the Kansas State Fire Marshal has adopted portions of the Life Safety Code, 1970 Edition, of the National Fire Protection Association. Section 8-1133, of the Life Safety Code, states in part:

"Occupant load. The occupant load permitted in any assembly building, structure, or portion thereof shall be determined by dividing the net

floor area or space assigned to that use by the square feet per occupant as follows:

- a. An assembly area of concentrated use without fixed seats such as an auditorium, church, chapel, dance floor, and lodge room--7 square feet per person."

As stated in your letter the entire seating area of Henry Levitt Arena is not being utilized during rock concerts. In view of the above regulations it would seem that the revised seating capacity (occupant load) of the arena, when the entire capacity of the arena is not utilized, would be determined by dividing the utilized floor space by the number seven. Allowing the occupant load to exceed this figure would be a violation of the state fire code.

The chief of the Wichita Fire Department or any member of the department duly authorized by the chief shall have the authority to enter any building, in accordance with existing laws, to determine compliance with the rules and regulations contained in the N.F.P.A. Life Safety Code. The authority for these actions is contained in K.S.A. 31-139 which states:

"The state fire marshal and those persons designated in section 6 [31-137] of this act shall have the authority during all reasonable hours of operation to enter, in accordance with existing laws, in and upon all buildings and premises subject to this act for the purpose of examination, inspection and investigation to determine compliance with the rules and regulations promulgated under the authority of this act. Whenever the state fire marshall or any person designated in section 6 [31-137] of this act finds any violation of the regulations issued under the authority of this act, he shall issue an order to the owner or his agent to cease and desist such violation."

The pertinent part of K.S.A. 31-137 referred to as section 6 in K.S.A. 31-139 states:

"The state fire marshall, his deputies, the chief of any organized fire department of any municipality, whether such fire department is regular or volunteer, or any member of any such fire department who has been duly authorized by the chief thereof, shall enforce the provisions of this act and any rules and regulations adopted pursuant thereto"

In light of the above it is our opinion that the Chief of the Wichita Fire Department, or any member of the department designated by him, has the authority to reduce the allowable seating capacity (occupant load) of Henry Levitt Arena, in accordance with the formula set out in section 8-1133, N.F.P.A. Life Safety Code, whenever the total area of the arena is not utilized, such as when rock concerts are presented.

We are hopeful the foregoing will be of assistance.

Very truly yours,



VERN MILLER
Attorney General

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