



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 17, 1975

Opinion No. 75-163

Mr. C. C. "Kirk" Hammer
Director
Food Service and Lodging Board
801 Harrison
Topeka, Kansas 66612

Dear Mr. Hammer:

You point out that the inspection staff of the State Food Service and Lodging Board is charged with the responsibility of conducting inspections of food service operations at various functions where admittance fees are charged, such as sporting events, the Kansas State Fair at Hutchinson, and other public functions. From time to time, inspectors are asked to pay admission fees and parking fees when on an inspection visit. You question the validity of this requirement inasmuch as inspection is specifically authorized and required by law.

K.S.A. 36-108 provides in pertinent part thus:

"It is hereby made the duty of the state food service and lodging board to inspect, or cause to be inspected, at least once annually, every . . . restaurant in the state, and for that purpose shall have the right of entry and access thereto, at any reasonable time."

The definition of the term restaurant appears at K.S.A. 36-301(c) thus:

"'Restaurant' shall mean any food service business, fixed or mobile, coffee shop, dining room, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, drive-in, soda fountain, tavern, bar, night club, roadside

Mr. C. C. "Kirk" Hammer
Page Two
April 17, 1975

stand, industrial feeding business, food
vending machine or catering kitchen"

The definition obviously includes the kinds of food service operations commonly found at fairs, sports events and the like. The licensee must afford the right of entry and access to state inspectors, under K.S.A. 36-108. The question arises whether this duty extends not only to operators and licensees of food service operations, but also to those other parties having control of admission to the premises where food service operations are found.

The licensing of food service operations is declared to be an exercise of the police power of the state. K.S.A. 36-302 states thus:

"The control and regulation of premises or places wherein food is prepared and sold or served for consumption on such premises; the establishment of standards of purity for foods; and the enforcement of sanitary safeguards imposed upon food handlers being necessary, this act shall be deemed an exercise of the police powers of the state for the protection of the social welfare and the health of the people of the state of Kansas."

The right of access provided by K.S.A. 36-108 is access to the premises of any food service operation or "restaurant" as that term is defined by K.S.A. 36-301(c). As an exercise of the police power of the state, that right is binding not only upon the licensee or operator of the establishment, but also against any other person who asserts a legal right to deny or impose conditions upon such access. Thus, in instances where inspection is sought of a "restaurant" on the premises of a fairground to which admission is charged, or admission is sought to the premises of a stadium or like facility to inspect a "restaurant" thereon, it is our opinion that the right of access forbids the operator of such premises to deny access to any duly authorized inspector of the Board when access is sought solely to perform official inspection duties. If the inspector wishes, of course, also to

Mr. C. C. "Kirk" Hammer
Page Three
April 17, 1975

attend the events on the premises, in addition to inspecting restaurants thereon, he must, of course, pay the admission or other fees required.

A parking fee, as distinguished from an admission fee, is for the privilege of parking on or near the premises to be inspected, and is not, at least in most cases, a condition on admission to the premises themselves where the "restaurant" is located. Thus, where a parking fee is charged, the right of entry granted by K.S.A. 36-108 provides no exemption for the inspector from paying for the parking privilege.

It may be desirable in the future, in order to clarify the right of entry when challenged by those in charge of admission at such events, if the Board were to adopt a rule or regulation specifying the right of entry, and that the right is binding upon any person having control of admission to the premises where a "restaurant" as defined by K.S.A. 36-108, is located. If we can be of further help in assuring that inspectors of the board are properly assured admittance in order to carry out their official duties, please feel free to call upon us for assistance.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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