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January 21, 1980

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ATTORNEY GENERAL OPINION NO. 80- 20

The Honorable Fred W. Rosenau
State Representative, Thirty-Ninth District
281-W, State Capitol
Topeka, Kansas 66612

Re: Automobiles and Other Vehicles--Powers
 of State and Local Authorities--When Local
 Authorities May Restrict Use of Highways

Synopsis: Pursuant to K.S.A. 8-1912(c) a city may enact an ordinance which would prohibit the operation of commercial trucks on a designated route within the city's corporate limits, even though such city route may provide the most practical access to a state highway where the usual means of access is under construction. Thus, such an ordinance does not constitute an unreasonable denial of access to such state highway. However, during the period of construction to the state highway, K.S.A. 1979 Supp. 68-2103 requires a detour route to be established by the secretary of transportation. It is by designating such a route that the commercial vehicles prohibited from using the city's streets are to be provided with a reasonable mode of access to the state highway.

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Dear Representative Rosenau:

You have requested an opinion of this office concerning the authority of a municipality to restrict by ordinance the use of their highways. The facts, as described in your request, indicate that certain entrance ramps to a state highway were closed for improvement. Thereafter, various commercial trucks began using the highways of a nearby city as a means of obtaining access to that highway. In response to this increased traffic, the city enacted an ordinance which prohibited those commercial vehicles from using the alternative city route. You have indicated that the effect of this ordinance was to deny to those commercial trucks a practical means of obtaining entrance to the state highway, and you have inquired as to the authority of a municipality to enact such a restriction.

K.S.A. 8-1912 grants local authorities the power to impose restrictions upon the use of highways within their jurisdiction. Subsection (c) of that statute provides:

"Local authorities with respect to highways under their jurisdiction also, by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight or size thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways: Provided, That adjacent premises to such restricted streets may be served, and such restrictions shall not apply to any street which is a connecting link of the state highway system, unless a satisfactory alternate route is provided and has been approved by the secretary of transportation."

The forerunner of K.S.A. 8-1912(c) was K.S.A. 8-5,123 (repealed by L. 1974, ch. 33, §8-2205.). Subsection (c) thereof, as originally enacted by L. 1937, ch. 283, §123, provided in part, as follows:

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"The state highway commission or local authorities with respect to streets and highways under their jurisdiction shall by ordinance or resolution, direct the operation of trucks or other commercial vehicles on designated street and highways. . . ." (Emphasis added.)

The significance of this statute was discussed by the Kansas Supreme Court upon the rehearing of Ash v. Gibson, 146 Kan. 756 (1937). The factual situation involved in Ash concerned the authority of a city to enact an ordinance prohibiting any trucks from carrying in excess of 600 pounds of gasoline through the city streets. This ordinance was enacted prior to the adoption of L. 1937, ch. 283. The Kansas Supreme Court originally held that such an ordinance was valid under existing law. Ash v. Gibson, 145 Kan. 825 (1937). However, with the enactment of 8-5,123 in 1937, the Court agreed to rehear the matter. In so doing, Justice Smith reviewed the legislative history of the above-mentioned statute:

"As the bill was first introduced section 130(c) provided as follows:

"'(c) Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibition and limitation shall be designated by appropriate signs placed on such highways.'

"When it was reported back to the senate by the committee on highways it was recommended that the bill be amended by striking out the above language and inserting in lieu thereof the following:

"'Local authorities with respect to streets and highways under their jurisdiction shall by ordinance or resolution direct the operation of trucks or other commercial vehicles on designated streets and highways which shall be designated by appropriate signs placed on such streets and highways.' .

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"Due to other sections of the original bill being stricken out this section 130(c) of the original bill became section 123(c) of chapter 283. It is argued that this subsection recognized the right of local authorities to direct the operation of trucks and other commercial vehicles on any highway or street they might designate, as provided in G.S. 1935, 8-125, but withdrew the right of the cities of the state to forbid the use of all its streets to such vehicles. Some weight is given this argument by the fact that chapter 283 was considered by the legislature after this court had announced its decision in Ash v. Gibson, supra." (Emphasis added.)
146 Kan. at 764.

Based, in part, on the preceding, the Court reversed its prior decision and found invalid the ordinance which prohibited that certain vehicular traffic.

The law existed in that form until 1955 when the legislature amended it to read as follows:

"The state highway commission or local authorities with respect to streets or highways under their jurisdiction may by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or may impose limitations as to weight thereof, on designated streets or highways which shall be designated by appropriate signs placed on such street or highway: Provided further, Such prohibition or restriction shall not apply to any street which is a connecting link of the state highway system unless a satisfactory alternate route is provided and has been approved by the state highway commission." L. 1955, ch. 59, §1. (Emphasis added.)

The major change of the 1955 session was to allow cities to "prohibit" various vehicles from their streets, as opposed to allowing them to "direct" where traffic could proceed. This amendment closely parallels the laws as introduced in 1937 and as it presently exists at K.S.A. 8-1912. We view this change as a clear indication that cities be allowed the right to prohibit the use of their streets to those vehicles designated by the statute and in the manner provided therein. We would note that such a prohibition does not apply to a street which is a "connecting link" of the state highway system. A "city connecting link" is defined by subsection (b) of K.S.A. 1979 Supp. 68-406a as a highway designated by the Secretary of Transportation which meets one of the four criteria set out in that statute. There is no indication that the situation you have described would involve a connecting link.

Your inquiry implies that the ordinance is unreasonable for it denies those designated vehicles a practical means of access to the state highway. Regarding this point, we would direct your attention to K.S.A. 1979 Supp. 68-2103. This statute provides for the designation of a detour route when, in the making of an improvement, the highway is not permitted for public use. The responsibility to establish such a route falls upon the respective municipality or the Secretary of Transportation. K.S.A. 1979 Supp. 68-2103. Apparently, no detour route was established in this instance. Therefore, the failure to provide a reasonable mode of access to the state highway does not fall upon the newly enacted ordinance but upon the failure to establish a detour route. It is the establishment of such a detour which should provide an alternate route of travel to vehicles using the state highway. Hence, we cannot say that the enactment of the ordinance you described unreasonably denies commercial trucks a practical mode of access to the highway.

In conclusion, it is our opinion that pursuant to K.S.A. 8-1912(c) a city may enact an ordinance which would prohibit the operation of commercial trucks on a designated route within the city's corporate limits, even though such city route may provide the most practical access to a state highway where the usual means of access is under construction. Thus, such an ordinance does not constitute an unreasonable denial of access to such state highway. However, during the period

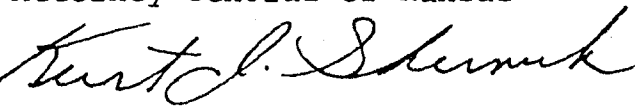
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of construction to the state highway, K.S.A. 1979 Supp. 68-2103 requires a detour route to be established by the Secretary of Transportation. It is by designating such a route that the commercial vehicles prohibited from using the city's streets are to be provided with a reasonable mode of access to the state highway.

Very truly yours,



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Attorney General of Kansas



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