



STATE OF KANSAS

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January 29, 1980

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ATTORNEY GENERAL OPINION NO. 80- 25

Mr. Charles Menghini
Pittsburg City Attorney
316 National Bank Building
Pittsburg, Kansas 66762

Re: Municipalities--Contracts Affecting the Administration
of Justice

Synopsis: A municipal ordinance prescribes a permanent rule
of conduct to continue in force until the ordinance
is repealed. A contract whereby a municipality agrees
not to enforce an ordinance as to a particular class
of persons obstructs and interferes with the regular
administration of justice, is contrary to public
policy, and is void.

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Dear Mr. Menghini:

You inquire whether the City of Pittsburg can legally enter into
an agreement with a local radio station to exempt certain vehicle
owners from chapter 21 (1967) of the Municipal Code of Pittsburg,
Kansas, which regulates off-street parking, by issuing said vehicle
owners an exemption sticker for the fee of five dollars. Under
the agreement, the radio station would guarantee to the city
the same income received from parking meters in the preceding
year, and the city would agree not to enforce code sections
1727 and 1728 providing, respectively, that:

"[i]t shall be unlawful to park any car in
a parking lot for a period of longer than
ten hours in any one day [and] [i]t shall be

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unlawful to park any car without first inserting a coin in the meter controlling the parking place used; or to park for a longer period than that covered by such coin."

An ordinance prescribes some permanent rule of conduct or government, to continue in force until the ordinance is repealed. Benson v. City of DeSoto, 212 Kan. 415 (1973). Proceedings brought for violations of municipal ordinances have been characterized by various courts as being civil, criminal, or quasi-criminal. 56 Am Jur.2d Municipal Corporations § 415. Regardless of the manner in which a violation of an ordinance may be characterized, the impartial enforcement of an ordinance as to all citizens is essential to the regular administration of justice.

It is stated in 17 Am Jur.2d Contracts § 193 that:

"[A]ll agreements for pecuniary consideration to control the regular administration of justice are void as against public policy, without reference to the question whether improper means are contemplated or used in their execution."

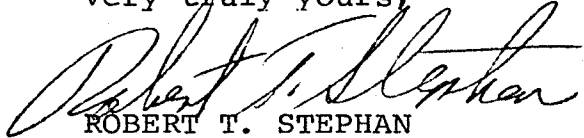
It is further stated therein that "[t]he administration of justice is not a subject to be controlled by contract." As tending to support these conclusions, see Sullivan v. Wilkoff, 26 N.E.2d 460 (1939); Liberty Mut. Ins. Co. v. Gilreath, 4 S.E.2d 126 (1939); Woodstock Iron Co. v. Richmond & Dan. Ext. Co., 129 U.S. 643 (1889); Eggleston v. Pantages, 175 P. 34 (1918). In the Eggleston case, supra at 36, the following rule is stated:

"It is a general rule that all agreements relating to proceedings in courts which may involve anything inconsistent with full and impartial course of justice therein are void, though not open to the actual charge of corruption. This is true, regardless of the good faith or intent of the parties at the time the contract was entered into, or the fact that no evil resulted by or through the contract." (Emphasis added.)

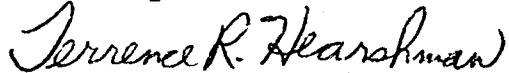
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In our judgment, an agreement by the City of Pittsburg to exempt certain vehicle owners from the provisions of Chapter 21 (1967) of the Municipal Code of Pittsburg, Kansas, would clearly obstruct the regular administration of justice and, therefore, be void as against public policy. This is true despite the fact that the city would be guaranteed the same amount of revenue which was received from parking meters in the preceding year. We can perceive of no circumstances under which a municipality may enter into an enforceable contract to selectively enforce an ordinance or ordinances of the municipality.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert T. Stephan".

ROBERT T. STEPHAN
Attorney General of Kansas

A handwritten signature in cursive script, appearing to read "Terrence R. Hearshman".

Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm