



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 23, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80-198

Mr. Harvey L. Ludwick, Ed.D.
Secretary of Human Resources
610 W. 10th, Second Floor
Topeka, Kansas 66612

Re: Labor and Industries--Boiler Inspection--Authority
of Political Subdivisions to Regulate Certain Types
of Boilers

Synopsis: Political subdivisions of the state may not enact ordinances which regulate or call for inspection of "boilers" as defined by K.S.A. 1979 Supp. 44-914(a). However, the Boiler Safety Act, K.S.A. 1979 Supp. 44-913 et seq., does not preclude the enactment of ordinances by political subdivisions concerning objects which do not fall within said statutory definition. Cited herein: K.S.A. 1979 Supp. 44-914, 44-915, and 44-929.

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Dear Mr. Ludwick:

As Secretary of Human Resources you have asked this office for an opinion concerning the Kansas Boiler Safety Act. More specifically you inquire as to a political subdivision's jurisdiction to enact provisions governing the construction, installation, or inspection of boilers.

The Kansas legislature has given the word "boiler" a special definition for the purposes of the Boiler Safety Act. K.S.A. 1979 Supp. 44-914(a) states that:

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"'Boiler' means a closed vessel in which water or other liquid is heated, steam or vapor is generated or steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or of electric, solar or nuclear energy. The term boiler shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves."

The legislature, by defining the word "boiler," has indicated that the Boiler Safety Act regulates only those objects which fall within this definition. A boiler which does not fall within the above definition would not be affected by the Boiler Safety Act.

The language of K.S.A. 1979 Supp. 44-929 makes it abundantly clear that cities and other political subdivisions do not have the power to enact ordinances regulating boilers as the word is used within the Act. The statute states in pertinent part thus:

"No city, county or other political subdivision of this state shall have the power to make any laws, ordinances or resolutions providing for the construction, installation, inspection, maintenance and repair of boilers within the limits of such city, county or political subdivision, and any such laws, ordinances or resolutions heretofore made or passed shall be void and of no effect."

The state has reserved regulation of this area to itself, thus pre-empting the field. The Act is also clearly uniformly applicable to all cities, so a charter ordinance under constitutional Home Rule powers would not be proper.

Although K.S.A. 1979 Supp. 44-915 states that certain types of boilers will not be regulated by the Boiler Safety Act, this statute does not empower political subdivisions of the state to regulate these boilers. It simply exempts these boilers from state regulation. The obvious purpose of this legislation is to provide for uniform state-wide inspection and regulation of boilers. The Act exempts some classes of boilers which the State does not intend to inspect and regulate. Nothing in the Act indicates an intent to "carve-out" a class of boilers for local inspection. Ordinances enacted by political subdivisions to regulate boilers as defined by the act would be in direct conflict with K.S.A. 1979 Supp. 44-929, and thus invalid.

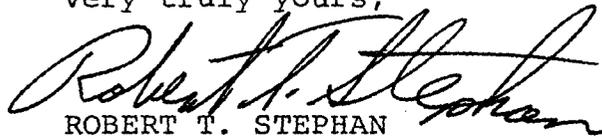
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In summary, a political subdivision may regulate "boilers" which do not fall within the statutory definition of that word, but K.S.A. 1979 Supp. 44-929 precludes local regulation of "boilers," as defined in the Act, including those exempt from state regulation.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:phf