



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 30

Thomas P. Barr  
Historic Properties Supervisor  
Kansas State Historical Society  
120 West Tenth  
Topeka, Kansas 66612

Re: Intoxicating Liquors and Beverages--Certain Prohibited Acts and Penalties--Consumption of Alcoholic Liquor In Public Places Prohibited

Synopsis: A charter ordinance of the city of Osawatomie which permits consumption of alcoholic liquor on state-owned property has a substantial extraterritorial impact, and is invalid to the extent that it purports to authorize such consumption. If consumption of alcoholic liquor is to be permitted upon park land leased to the city of Osawatomie by the state of Kansas, it will be necessary for the Kansas Legislature to amend the provisions of K.S.A. 41-719 to so provide. Cited herein: K.S.A. 41-719, 76-2002a, Kan. Const., Art. 12, Section 5.

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Dear Mr. Barr:

You request our opinion as to whether the city of Osawatomie may authorize the consumption of alcoholic liquor on state-owned property leased to the city. Specifically, you advise that the city of Osawatomie has adopted a charter ordinance which exempts the city from the provisions of K.S.A. 41-719, and which authorizes (with certain restrictions) the consumption of alcoholic liquor at the shelter house located in John Brown Memorial Park. Said park was leased to the city by the state of Kansas for a period 99 years, pursuant to the provisions of

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K.S.A. 76-2002a et seq., and the city now operates and maintains the park, except a tract of land which was excepted from the lease and which the state maintains as a museum (John Brown's cabin).

K.S.A. 41-719 provides, in pertinent part, as follows:

"(a) Except as provided in subsection (b), no person shall drink or consume alcoholic liquor upon . . . property owned by the state or any governmental subdivision thereof;

"(b) The provisions of subsection (a) shall not apply to the drinking or consumption of alcoholic liquor:

. . .

"(2) In any state owned or operated building or structure and upon surrounding premises which are furnished to and occupied by any state officer or employee as a residence.

. . .

"(c) Any city having a population of more than 200,000 may exempt, by ordinance, specified property, title of which is vested in such city, from the provisions of subsection (a)." (Emphasis added.)

In Kansas Attorney General Opinion No. 82-116, this office considered the authority of a city to exempt itself, pursuant to home rule powers, from the provisions of the above-quoted statute, and we concluded, in part, as follows:

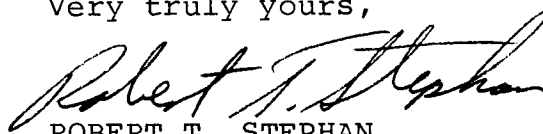
"K.S.A. 41-719, which prohibits inter alia the consumption of alcoholic liquor on public property, is a legislative enactment which does not apply uniformly to all cities. Hence, a city to which this enactment applies may exempt itself by charter ordinance from the whole or any part thereof, and may also provide substitute or additional provisions, so as to permit consumption of alcoholic liquor on specified city property." (Emphasis added.)

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While the city of Osawatomie may exempt itself from the provisions of K.S.A. 41-719 so as to permit consumption of alcoholic liquor on city-owned property, it does not necessarily follow that it may permit such consumption on property where it has a leasehold interest, and title is vested in the state of Kansas. Article 12, Section 5 of the Kansas Constitution vests cities with the powers of home rule, but by the terms of said constitutional provision such powers are restricted to a determination of cities' "local affairs and government." State interests, as well as city interests, are affected by a charter ordinance which permits consumption of alcoholic liquor on state-owned property, and it has been suggested that "ordinances involving . . . substantial extraterritorial impact do not fit within the 'local affairs and government' language of Article 12, Section 5." Clark, State Control of Local Government in Kansas: Special Legislation and Home Rule, 20 Kan. L. Rev. 631, 677 (1972); see, also, Kansas Attorney General Opinion No. 81-112 (copy enclosed).

In our judgment, a charter ordinance of the city of Osawatomie which permits consumption of alcoholic liquor on state-owned property has a substantial extraterritorial impact, and is invalid to the extent that it purports to authorize such consumption. If consumption of alcoholic liquor is to be permitted upon park land leased to the city of Osawatomie by the state of Kansas, it will be necessary for the Kansas Legislature to amend the provisions of K.S.A. 41-719 to so provide.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:ta