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August 9, 1983

ATTORNEY GENERAL OPINION NO. 83- 120

Honorable Betty Jo Charlton
State Representative, Forty-Sixth District
1624 Indiana Street
Lawrence, Kansas 66044

Re: Cities and Municipalities--Abatement of Nuisances--Assessment of Costs

Synopsis: Ordinance No. 5380 of the city of Lawrence, which prescribes procedures for the abatement of weed nuisances, does not violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, is not unconstitutionally vague, does not confer arbitrary powers upon an administrative official, and is not invalid because it fails to provide for appeal of an administrative finding prior to abatement by the city. Cited herein: U.S. Const., 14th Amend.

* * *

Dear Representative Charlton:

You request our opinion as to the constitutionality of a weed ordinance (Ordinance No. 5380) adopted by the city of Lawrence.

The subject ordinance declares all weeds to be a nuisance and provides procedures for abatement thereof (Section 18-301). The term "weeds" is defined, in part, to include the following:

> "Weeds and indigenous grasses on or about residential property which because of its

> height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 12 inches in height." [Section 18-302(c)].

The ordinance provides for the appointment of a public officer to enforce the provisions thereof, and provides that said officer shall notify owners or occupants of land, by certified mail, return receipt requested, of violations of the ordinance. [Section 18-303(a) and (b)]. Said notice must order the owner or occupant to cut the subject weeds within 10 days of receipt of the notice, and must inform the owner or occupant that if the weeds are not cut, the city or its agent will cut them and assess the cost of cutting against the owner, occupants, or person in charge of the property. [Section 18-303(b) and (c)]. Upon default of the owner and cutting of weeds by the city, the enforcement officer must bill the owner or occupant for the cost of abatement, and if the cost remains unpaid, the ordinance prescribes a procedure whereby the cost may be certified as a special assessment against the subject property. (Section 18-304). Finally, the ordinance authorizes the enforcement officer, and his or her assistants, employees, and contracting agents, to enter private property to abate weeds pursuant to the ordinance, and prescribes that it shall be unlawful to interfere with the cutting and destruction of weeds by the enforcement officer (and his or her agents). (Sections 18-305 and 18-306).

You indicate that a constituent who sought to allow bluegrass to grow to maturity at 18" was alleged to have violated the ordinance, and ask whether the ordinance denies "constitutional rights of a property owner to use his property in a harmless though useful manner." You also question whether the ordinance is unconstitutionally vague, and ask whether the city enforcement officer may deviate from "additional guidelines and clarifications to the written text" supplied by the city commission. Finally, you ask whether the ordinance is unconstitutional because it "contains no provisions for appeal of a staff ruling."

Under the Fourteenth Amendment to the U.S. Constitution, no state (or its political subdivisions) may deprive any person of property without due process of law. It has generally been held, however, that weed ordinances, similar to the Lawrence ordinance described above, do not constitute an unlawful deprivation of a property interest. See McQuillin, Municipal Corporations (3rd edition) §24.90. Courts have held that such ordinances do not constitute an invasion of private property, but are merely the regulation

of the use of such property in order that it will not be used to the detriment of the general public. Flesch v. Metropolitan Dade County, 240 So.2d 504, 506 (Fla., 1970).

In regard to whether the ordinance is unconstitutionally vague, it has been held that the term "weed" has a common meaning which is easily understood by the average citizen. Sobocinski v. City of Williamsport, 319 A.2d 697, 701 (Pa., 1974); Thain v. City of Palo Alto, 24 Cal. Rptr. 515, 524 (Calif., 1962). Courts have stated that a weed ordinance need not furnish detailed plans and specifications, Thain v. City of Palo Alto, supra at 524, and that a landowner's "vegetal preferences" are irrelevant to the interpretation and enforcement of such an ordinance. Sobocinski v. City of Williamsport, supra at 699. Ordinances which are no more specific than the Lawrence ordinance have been upheld by courts in other states. Sobocinski v. City of Williamsport, supra; Flesch v. Metropolitan Dade County, supra; Thain v. City of Palo Alto, supra; City of St. Louis v. Galt, 77 S.W. 876 (Mo. Sup. Ct., 1903). In accordance with these authorities, it is our opinion that the Lawrence weed ordinance is not unconstitutionally vague.

Regarding the alleged deviation by the enforcement officer from "additional guidelines and clarifications" supplied by the city commission, you do not indicate specifically the substance and content of such guidelines. Generally, a municipal ordinance must prescribe a standard or norm governing its enforcement and the exercise of any discretion by municipal officers, and arbitrary powers conferred upon officers cannot be sustained. McQuillin, Municipal Corporations (3rd ed.) §18.12. In view of this principle, we believe that it would be appropriate for the city to include any "additional guidelines" within the ordinance itself. However, as presently written, it is our opinion that the ordinance does not confer arbitrary powers upon the enforcement officer. The ordinance sets a definite height at which "weeds and indigenous grasses" must be cut, and it is generally held that the standards required to support a delegation of power by a local legislative body may be general, so long as they are capable of reasonable application and are sufficient to limit and define the administrative official's discretionary powers. McQuillin, Municipal Corporations (3rd ed.) §18.12; see also Sobocinski v. City of Williamsport, supra at 701.

Finally, in response to your question concerning the failure of the ordinance to provide for "the appeal of a staff ruling," it is generally held that municipalities may provide for the "summary abatement" of nuisances without the necessity of a preliminary formal legal proceeding. McQuillin, Municipal

Corporations (3rd ed.) §24.71. In considering a weed ordinance similar to the Lawrence ordinance, one court has noted that the right to a prior hearing attaches only to the deprivation of a "significant" property interest, and that the court could not think of a less "significant" property interest than uncultivated weeds and grass "taken" from the landowner. Sobocinski v. City of Williamsport, supra at 701. Accordingly, it is our opinion that the subject ordinance is not invalid because it fails to provide for appeal of a "staff ruling" prior to abatement by the city.

Very truly yours,

Robert T. Stephan

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RTS:BJS:TRH:jm