



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 9

Elsbeth D. Schafer  
Assistant City Attorney  
City of Topeka  
215 E. 7th Street, Room 353  
Topeka, Kansas 66603

Re: Fire Protection--Fire Safety and Prevention--School Buildings

Synopsis: While a city may not condition the grant of a building permit to a school upon compliance with its building codes, it may require a school district to obtain a building permit and to comply with city inspection requirements. The permit and inspection requirements may be imposed only to enforce compliance with building codes prescribed by K.S.A. 31-150. Cited herein: K.S.A. 31-150; Kan. Const., Art. 12, §5.

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Dear Ms. Schafer:

You request clarification of Attorney General Opinion No. 86-81. Specifically, you ask whether a municipality which has adopted the same uniform code prescribed by K.S.A. 31-150 may require a school district to obtain a building permit and comply with city inspection requirements. As you point out, the State of Kansas does not have an agency which inspects school buildings under construction to ensure compliance with the provisions of K.S.A. 31-150.

Although this office has previously stated that a city may not condition the grant of a building permit to a school upon compliance with its building codes (see Attorney General Opinion No. 86-81), we have not considered whether a school district must obtain a city building permit under the circumstances you describe. Accordingly, we address that question (and the related issue of city inspection requirements) for the first time.

In State ex rel. Schneider v. City of Kansas City, 228 Kan. 25 (1980), the Kansas Supreme Court ruled that the Kansas Board of Regents was not subject to the building permit and building code ordinances of Kansas City for construction of a radiation therapy facility on the campus of the Kansas University Medical Center. The court held that the construction of institutions of higher learning under the control of the Board of Regents did not "fall within the purview of local affairs" for purposes of determining whether a city could, under Article 12, Section 5 of the Kansas Constitution, enforce a building code which conflicted with the code prescribed by K.S.A. 31-150. Id. at 32-33. As to construction projects under the control of the Board of Regents, the decision also appears to imply that municipal enforcement of building codes prescribed by K.S.A. 31-150 is not within a city's power of home rule:

"We hold that the Board of Regents, being subject to the comprehensive building construction codes and legislation enacted by the legislature and being charged with the responsibility for all institutions of higher learning in the state and the application of such building codes uniformly thereto, is not required to obtain a building permit or be controlled by the Kansas City building codes for construction at the Kansas University Medical Center." 228 Kan. at 38.

The Supreme court specifically limited its decision in the Medical Center case to the parties and factual situation before it. 228 Kan. at 33. In our judgment, the enforcement of building codes prescribed by K.S.A. 31-150 during the construction of a school building by a unified school district is a "local affair" under the home rule amendment. This determination recognizes that the uniform building code prescribed by K.S.A. 31-150 specifically provides for enforcement by a "building official" (see

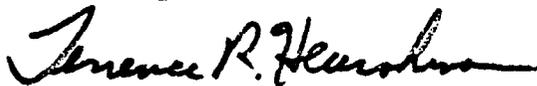
Section 202), and the interest a city has in ensuring that school buildings erected for its children comply with said code.

For the reasons set forth above, it is our opinion that while a city may not condition the grant of a building permit to a school upon compliance with its building codes, it may require a school district to obtain a building permit and to comply with city inspection requirements. The permit and inspection requirements may be imposed only to enforce compliance with building codes prescribed by K.S.A. 31-150.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JLM:TRH:jm