

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

---

COMPLETE TITLE OF CASE:

CITY OF KANSAS CITY, MISSOURI

Respondent

v.

GEORGIA J. CARLSON,

Appellant

---

DOCKET NUMBER **WD70576**

DATE: June 23, 2009

---

Appeal From:

Circuit Court of Jackson County, MO  
The Honorable Richard E. Standridge, Judge

---

Appellate Judges:

Division Two: Thomas H. Newton, C.J., Harold L. Lowenstein and James M. Smart, Jr., JJ.

---

Attorneys:

Jonathan Sternberg, Kansas City, MO  
P. Benjamin Cox Kansas City, MO

Counsel for Appellant,  
Counsel for Amicus Curiae,

---

Attorneys:

Lowell C. Gard, Kansas City, MO

Counsel for Respondent.

---

**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

CITY OF KANSAS CITY, MISSOURI, Respondent, v.  
GEORGIA J. CARLSON, Appellant

**WD70576**

**Jackson County**

Before Division Two Judges: Newton, C.J., Lowenstein and Smart, JJ.

The Kansas City voters approved an ordinance prohibiting smoking in enclosed public places and places of employment. Carlson was cited for allowing customers to smoke in JC's, a bar and billiard parlor. She was found guilty and fined \$100. Carlson argues that the judgment is invalid because the City's ordinance conflicts with Missouri's Indoor Clean Air Act (ICAA) and is therefore void.

**AFFIRMED**

**Division Two Holds:**

Kansas City is organized under the Missouri Constitution as a constitutional charter city. It possesses all powers that are not limited or denied by the constitution, by statute, or by its charter. Consequently, we ask not whether the City had authority for its ordinance, but whether other law denied its authority to enact the ban. Under statute, municipal ordinances must be in conformity with state law on the same subject matter. If a statute and ordinance conflict, the ordinance is void. An ordinance and statute conflict if the ordinance prohibits what the statute permits, or permits what the statute prohibits. However, if the ordinance merely prohibits *more* than the state statute, the two measures are not in conflict.

The ICAA prohibits smoking in public places except in designated smoking areas. Certain places are excluded from the statute's definition of "public places," including bars and billiard parlors such as JC's. The City's ordinance prohibits smoking in all enclosed places of employment and all enclosed public places within the City; although it excepts some places from its restriction, it does not exclude bars and billiard parlors such as JC's. Thus, the ICAA does not require JC's to provide a non-smoking area while the City's ordinance prohibits smoking altogether in JC's.

Carlson argues that because the ICAA excludes bars and billiard parlors such as J.C.'s from compliance, the exclusion must be read as "positive law permitting that conduct, such that a city has no authority to prohibit it entirely." However, a plain reading of the ICAA does not support that it authorizes those places it exempts to permit smoking or makes them immune from local smoking regulation. Rather, the ICAA simply excludes those places from compliance. Although Carlson relies on several Missouri cases to argue that where a statute exempts conduct, we must read that conduct as affirmatively authorized, we find those cases distinguishable. Moreover, we find the laws at issue here to be more analogous to other case law finding no conflict between a statute and ordinance where both prohibited the same type of conduct, but the ordinance went further in its prohibitions.

Carlson also argues that because the ICAA exempts bars and billiard parlors such as JC's from its definition of "public place," the City is without power to include them in its ordinance's definition of "public place." However, the Missouri Supreme Court has found no inherent conflict where a statute and an ordinance define terms differently. Rather, it looked to the effect of the difference in the defined terms and analyzed whether the ordinances permitted that which the statutes prohibited, or prohibited that which the statutes permitted. Because the ICAA merely excludes bars such as JC's from its proscription, it does not affirmatively permit smoking. Consequently, the ordinance does not prohibit that which the state law permits.

Because the ICAA and the City's ordinance are not in conflict, we affirm.

**Opinion by: Thomas H. Newton, C. J.**

June 23, 2009

\*\*\*\*\*

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**