

Subject

MILLER

*Lenses - C. W. B.
Location of Business*

Copy to _____



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

February 11, 1974

VERN MILLER

Attorney General

Opinion No. 74-46

Mr. W. McCaslin
City Attorney
Stockton, Kansas 67669

Dear Mr. McCaslin:

You have requested an opinion concerning a Stockton City Ordinance which prohibits the location of a cereal malt beverage business within 325 feet of a church or school. Specifically, the question is whether the measurement should be from the actual building housing the establishment or from the grounds surrounding the building.

K.S.A. 41-710 of the Kansas Liquor Control Act has a similar distance requirement for retail liquor stores. The Director of the Alcoholic Beverage Control K.A.R. 14-3-2 determined that "such distance shall be measured in a straight line from the closest point on the boundary of the real property upon which is situated any public or parochial school or college or church to the closest point of the premises sought to be licensed."

This interpretation is based upon the fact that only the premises are licensed for the sale of alcoholic liquor and the sale must take place inside the licensed premises.

The provisions of K.S.A. 41-2701 et seq. allow the governing

W. McCaslin
Stockton, Kansas

Pg. 2

body of a city or county to issue cereal malt beverage licenses to a particular place of business. Additionally, the governing body may prescribe rules and regulations concerning the sanitary and health conditions of the places licensed.

It is the opinion of this office that the actual building is licensed and not the real property upon which the building is located. Therefore, said distance should be measured in a straight line from the closest point on the boundary of the real property upon which is situated any church or school, to the closest point of the building housing the cereal malt beverage establishment.

Very truly yours,

VERN MILLER
Attorney General

By *W. Boyd Evans*
W. Boyd Evans
Assistant Attorney General

VM:WBE:eb