

FILE

Subject

Liquor Licenses - Private Clubs

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STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

March 13, 1974

Opinion No. 74- 92

Honorable Kenneth J. Winters
Chairman, Federal and State
Affairs Committee
House of Representatives
State Capitol
Topeka, Kansas 66612

Dear Representative Winters:

You request my opinion

"on what seems to be an inconsistency of regulation of certain private clubs operating under the guise of 'non-profit corporations' when in fact, the profit 'catering' corporation and all profits are attributed to the profit corporation, while the sham non-profit corporation merely holds the licenses."

You suggest that courts have on occasion looked behind the corporate veil, as it were, on the basis of fraud and for other reasons, and question whether this office may "attack the validity of the 'non-profit corporation' and the 'catering corporations' as subterfuge, and reduce the club law to its original intent."

K.S.A. 41-2601(b) (2) states thus:

"A class A club shall be a premises owned or leased and operated by a corporation, partnership, business trust or association, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), their families and invited and accompanied guests, and which is not operated for profit other than such as would accrue to the entire membership. A corporation, partnership, business

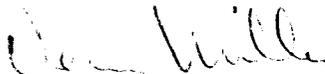
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trust, or association not operated for a profit, for the purposes of the definition of a class A club shall only include such a corporation, partnership, business trust, or association which has been exempted from the payment of federal income taxes as provided by section 501(c), (7) and (8), internal revenue code of 1954." [Emphasis supplied.]

If a corporation is organized for the purpose of obtaining a license to operate a club as defined by the Act, and obtains an exemption from the payment of federal income taxes from the Internal Revenue Service as provided by law, that corporation is entitled to issuance of a license if otherwise qualified. To our knowledge, the Internal Revenue Service has withdrawn no exemption on the basis of any catering or management contract. Indeed such contracts are routinely and regularly examined by the IRS and subject to its approval.

If a corporation has obtained the necessary federal income tax exemption precisely for the purpose of complying with the Kansas private club law, the corporation has complied with the letter of the law. Whatever may have been the "original intent" of the act, it affords no basis for legal action seeking to pierce the corporate veil of a corporation which complies with the letter of the statute.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Representative Winters
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Prairie Village, Kansas 66207