



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER

Attorney General

June 6, 1975

Opinion No. 75 257

Mr. Jerry M. Smetana
Attorney at Law
120 West Mill - PO Box 205
Plainville, Kansas 67663

Dear Mr. Smetana:

You have requested that this office advise you on a number of questions concerning the operation of a pool hall in your city that apparently has a license to sell cereal malt beverages.

First, you ask whether patrons of a cereal malt beverage establishment may remain on the premises after midnight to consume beer that they purchased prior to midnight. The statutes concerning cereal malt beverages do not provide for closing hours for these establishments with K.S.A. 41-2704 only providing that "no cereal malt beverages may be sold between the hours of twelve midnight and 6:00 AM...". This same statute does provide that the governing body of a city may prescribe closing hours for such businesses located within their city. Therefore, if there is no local ordinance establishing closing hours, consumption on the premises of beer purchased prior to midnight would not be unlawful.

Secondly, you ask whether a pool hall may remain open on Sunday if no beer is sold. Here again the statute only prohibits the sale of cereal malt beverages on Sunday which would thus allow the pool hall to remain open for other purposes if not in conflict with a local ordinance.

Thirdly, you present the situation of a pool hall operator who leases the basement of his establishment to people who use the basement after twelve to consume cereal malt beverages which were purchased in the pool hall prior to midnight. You recite, that these individuals purchase keg beer which is kept in the licensee's cooler and then piped down to the basement for these early morning gatherings. You ask whether this leasing of the basement relieves the proprietor of his lawful duties.

Mr. Jerry M. Smetana
June 6, 1975

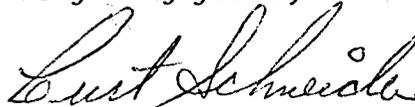
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The proprietor may not sell 3.2% beer in the manner you describe. It has long been our view, with respect to the sale of 3.2% beer, that delivery of the product is an integral part of the sales transaction, with no sale being completed until time of delivery. Under the facts presented, the sale is not consummated until the beer is delivered, after midnight, through the taps to the individuals in the basement, thereby constituting an after hours sale in violation of K. S. A. 41-2704.

In addition, K.S.A. 41-2704 directs that "[n]o private rooms or closed booths shall be operated in said place of business." K.S.A. 41-2701 (c) defines "place of business" as "any place at which cereal malt beverages are sold." The premises of the basement are used as a place where the sale of cereal malt beverages is consummated, and thus, when leased to private parties for private use, constitutes a "private room" in the "place of business" which is prohibited by K.S.A. 41-2704.

Lastly, you ask whether the city can enact an ordinance that requires a cereal malt beverage licensee, having a place of business within the city, to be a resident of the city. The legislature has provided the minimum residency requirements in K.S.A. 41-2703 by specifying that before an applicant can qualify for a license the applicant must be a resident of Kansas for at least one year prior to the date of application, and a resident of the county in which the place of business is located for at least six months prior to application (the 1973 legislature deleted the six month city residency requirement formally contained in the statute). While the city is given the discretion under K.S.A. 41-2704 to "prescribe hours of closing, standards of conduct, and the rules and regulations concerning the moral, sanity and health conditions of the places licensed" which are "not inconsistent" with the act, the governing body is given no discretion in prescribing qualifications for the issuance or renewal of a license. The legislature has clearly spoken on the qualifications required, and any ordinance to the contrary would be void.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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