



STATE OF KANSAS

*Office of the Attorney General*

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*Attorney General*

September 10, 1975

ATTORNEY GENERAL OPINION NO. 75- 360

Mr. E.V.D. Murphy  
State Director of Alcoholic Beverage Control  
Department of Revenue  
Topeka, Kansas

Re: Intoxicating Liquors and Beverages -- Alcoholic Beverage Control Director and Board of Review -- Authority of Agents to carry firearms.

Synopsis: Agents of Alcoholic Beverage Control Division are law enforcement officials and have the inherent authority to possess firearms to aid in the performance of their duties.

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Dear Director Murphy:

You have orally requested an opinion of this office concerning whether agents of your office have authority to carry firearms in the performance of their duties.

Initially, it should be pointed out that K.S.A. 21-4201 makes it a crime to carry certain weapons or firearms "concealed on the person except when on his land or in his abode or fixed place of business," but exempts law enforcement officers from application of the statute. It not being unlawful for law enforcement officers to carry firearms, the statutes with respect to the different enforcement agencies are silent as to express authority to carry weapons, this authority seemingly inherent in the individual's position as an enforcement officer in the performance of his duties and in order to protect

the officer's life or the life or property of another.

Whether the agents of the Alcoholic Beverage Control Division are authorized to carry weapons, thus becomes a question of whether they are "law enforcement officials" under the law.

K.S.A. 41-201 provides:

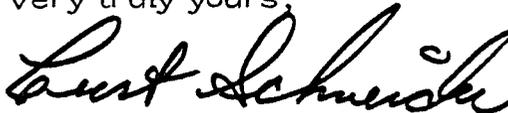
"The director of alcoholic beverage control and such agents and employees of the director as shall be designated by the director, with the approval of the secretary of revenue, are hereby vested with the power and authority of peace and police officers, in the execution of the duties imposed upon the director of alcoholic beverage control by this act and in enforcing the provisions of this act."

While a complete discussion of the director's exact duties under the Liquor Control Act would be far too lengthy, it will suffice to say that these duties involve the enforcement of criminal statutes in an industry historically attended by a certain amount of criminal element. Examples of the director's duties include the enforcement of the prohibition against the maintenance of an open saloon (K.S.A. 41-803), the responsibility of moving against the unlicensed manufactures and unlicensed retail sale of liquor (K.S.A. 41-209 (3), 41-805, and 41-902), the enforcement of unlawful entry of alcoholic liquor into the state (K.S.A. 41-407) and the inspection of licensed premises of wholesaler, retailer, and private clubs (K.S.A. 41-209 (5) and 41-2613). With respect to these duties, this office has formally recognized the authority of the director's agents to make arrests in connection with violations of the state liquor law and state gambling laws with which they are confronted. (See attached opinion)

Being cognizant of the criminal enforcement functions conducted by these agents, the legislature has expressly included these individuals in the definition of "police officer(s)" or "law enforcement officer(s)" in K.S.A. 74-5602 (e) and has required such individuals to attend and satisfactorily complete a basic course of not less than one hundred-sixty (160) hours of accredited instruction at the Law Enforcement Training Center in Hutchinson, Kansas, (see K.S.A. 74-5608), of which twenty (20) hours is devoted to firearm training and instruction.

Therefore it is clearly the intent of the legislature that the agents of the Alcoholic Beverage Control Division are law enforcement officers, that they have all the rights and responsibilities connected with being enforcement officers, including the inherent authority of possessing firearms to aid in the performance of their duties.

Very truly yours,

  
CURT T. SCHNEIDER  
Attorney General

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