

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 14, 1976

ATTORNEY GENERAL OPINION NO. 76 - 220

Mr. Jerry M. Smetana
Plainville City Attorney
P.O. Box 205
Plainville, Kansas 67663

Re: Intoxicating Liquors and Beverages -- Cereal Malt Beverages --
Revocation of License; Grounds.

Synopsis: Using language identical to that found in K.S.A. 41-2708 (j),
Plainville City Ordinance No. 3-109 requires the revocation
of a cereal malt beverage license if the licensee employs, in
any capacity, any felon or person convicted of a liquor violation.

* * *

Dear Mr. Smetana:

You have requested an opinion of this office concerning your city ordinance section 3-109, which deals with the regulation of cereal malt beverage establishments.

You first ask whether section 3-109 (k) would cause a license to be "denied" if a licensee employs a felon, or a person who has been convicted of a liquor violation, not to actually sell cereal malt beverages, but to "merely work at this establishment." Section 3-109 (k) reads as follows:

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"The governing body of the city, upon five (5) days notice to the person holding such license shall revoke such license for any one of the following reasons... For the employment of persons who have been adjudged guilty of a felony or of any violation of the intoxicating liquor law."

* * *

It is a fundamental rule of statutory construction that where no ambiguity exists, it is presumed conclusively that the clear and explicit terms of the statute expressing the legislative intent and that the plain terms of the statute are to be applied and given effect. Johnson v. General Motors Corp., 199 Kan. 720 and State v. Bagemehl, 213 Kan. 210. No exceptions, or meaning may be added that is not suggested by the language of the statute. Southwestern Bell Tel. Co. v. Employment Security Board of Review, 210 Kan. 403. Since the rules of construction used to interpret municipal ordinances are generally the same used in constructing statutes (Denning v. Yount, 9 K.A. 708.), this office is of the opinion that sec. 3-109 (k), requires the revocation of a cereal malt beverage license by the governing body of the city if the licensee employs a felon or a person convicted of a liquor violation, to work in any capacity. This is the same interpretation this office attributes to the identical language found in K.S.A. 41-2708 (j). The employment of a person described in the paragraph (k) of the ordinance would not cause an application for a cereal malt license to be "denied", with the disqualifying factors being specifically set out in sec. 3-104 and sec. 3-105.

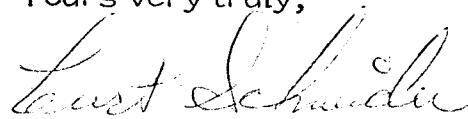
You next ask whether the same section would cause a license to be denied if the person employed by the licensee was a part-owner or lessor of the building on which the business was located.

Applying the same rule of construction mentioned above, which prohibits adding exceptions that do not exist on the face of the statute, we are of the opinion that the employment of any felon or individual with a liquor conviction would subject the license to revocation, but not denial of the license initially.

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You last ask whether it is our opinion that Article I of your city ordinances, entitled "Cereal Malt Beverages" is constitutional. Since your letter contains no reference to any particular constitutional principle of either the United States Constitution or that of this state which is drawn in question, it is impractical, if not impossible, to attempt to anticipate every question of a constitutional nature which may be raised regarding this article. We would state that the ordinances on their face do not appear to be repugnant to any guarantees contained in the federal or state constitutions and that such ordinances appear reasonably designed to carry out a proper legislative purpose. We are also of the opinion that the provisions contained in this article are not arbitrary, do not conflict with the general law of this state, and are within the authority granted to cities by the legislature in K.S.A. 41-2704.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:WMS:eb