

STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

*Curt T. Schneider*  
Attorney General

June 14, 1977

ATTORNEY GENERAL OPINION NO. 77-195

Mr. E. V. D. Murphy  
Director  
Alcoholic Beverage Control Division  
Kansas Department of Revenue  
State Office Building  
Topeka, Kansas 66612

Re: Alcoholic Liquors--Distributors--Authorized Vendors

Synopsis: Under K.S.A. 41-306 of the Kansas Liquor Control Act, a licensed Kansas alcoholic liquor distributor may purchase alcoholic liquor which is manufactured in the United States only from 1) the manufacturer of such liquor, 2) a corporate subsidiary of a manufacturer which markets its products solely through one or more subsidiaries, and 3) another licensed Kansas distributor. Companies which only have exclusive marketing agreements with manufacturers, but which are not corporate subsidiaries of such manufacturers, are not eligible to sell such alcoholic liquors to licensed Kansas distributors.

\* \* \*

Dear Mr. Murphy:

You inquire concerning K.S.A. 41-306, of the Kansas Liquor Control Act, K.S.A. 41-101 et seq., which provides in pertinent part thus:

"An alcoholic liquor distributor's license (except beer) shall allow the wholesale purchase, importation and storage of alcoholic liquors and sale of alcoholic liquors (except beer) to licensees in this state and to such persons without the state as may be permitted by law

Mr. E. V. D. Murphy  
Page Two  
June 14, 1977

but all such alcoholic liquor so purchased or imported which is manufactured in the United States shall be purchased from a manufacturer or a corporate subsidiary of a manufacturer who markets his products solely through a subsidiary or subsidiaries or from another licensed distributor . . . ."

The term "distributor" is defined at K.S.A. 41-102(8) to mean

"the person, as hereinafter defined [as any natural person, corporation, partnership or association], importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this act."

In Joseph E. Seagram and Sons, Inc. et. al v. E. V. D. Murphy, Director of Alcoholic Beverage Control, No. 129,453 decided by a journal entry filed May 26, 1977, by Judge Kay McFarland of the Shawnee County District Court, the Director was engaged in litigation with Joseph E. Seagram and Sons, Inc., and a number of other suppliers of alcoholic spirits and wines, concerning the Kansas price affirmation law, K.S.A. 41-111 et seq. In a memorandum opinion, the court made a finding concerning two intervening plaintiffs, Premier Imports, Inc., of Oklahoma City, Oklahoma, and Ambrose and Co. of Kansas City, Missouri, two companies which you and your predecessors in office for a number of years have permitted to do business in Kansas as "marketing subsidiaries" of the manufacturers whose wines they market. The court determined, however, that these companies were not marketing subsidiaries of the manufacturers of wines which these companies sold to Kansas wholesalers, but rather were independent vendors. The companies hold basic federal wholesalers permits, which allow permit holders to purchase distilled spirits, wines and malt beverages for resale at wholesale to trade buyers. Ambrose and Premier purchase wines from manufacturers in California and New York, take title to the merchandise, and offer these same wines for resale to Kansas wholesalers. These firms hold the exclusive right to market particular manufacturers' products in Kansas under exclusive marketing agreements with such manufacturers.


Mr. E. V. D. Murphy  
Page Three  
June 14, 1977

In view of the court's finding that Premier and Ambrose are not manufacturers or marketing subsidiaries of manufacturers whose wines they sell in Kansas, but are independent vendors, you inquire whether these two companies may be permitted to sell alcoholic liquors to Kansas wholesalers in compliance with the restrictions of K.S.A. 41-306, quoted supra. An alcoholic liquor distributor's license allows the wholesale purchase, importation and storage of alcoholic liquors by licensees in this state, and requires that all alcoholic liquor so purchased at wholesale which is manufactured in the United States be purchased

"from a manufacturer or a corporate subsidiary of a manufacturer who markets his products solely through a subsidiary or subsidiaries or from another licensed distributor . . . ."

You indicate that distributors licensed under K.S.A. 41-306 have been permitted to purchase alcoholic liquors from Ambrose and Premier, and other companies similarly situated, on the theory that such companies were marketing subsidiaries of the manufacturers whose liquors they marketed. It is clear from the finding of the court that while Premier and Ambrose are engaged in the marketing of alcoholic liquors, they are not corporate subsidiaries of the manufacturers whose products they sell. K.S.A. 41-306 requires that U.S.-manufactured alcoholic liquors which are purchased by licensed Kansas distributors be purchased from either 1) the manufacturer or 2) a corporate subsidiary of a manufacturer which markets its products solely through one or more subsidiaries or 3) another Kansas licensed distributor. Ambrose and Premier have been found by the court to be independent vendors, and not the corporate subsidiaries of the manufacturers with whom they have exclusive marketing agreements. Accordingly, they are not authorized vendors of alcoholic liquors to alcoholic distributor licensees in Kansas.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj