



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

October 24, 1977

ATTORNEY GENERAL OPINION NO. 77- 346

Mr. Robert M. Corbett  
Attorney  
Department of Health and Environment  
Building 740, Forbes AFB  
Topeka, Kansas 66620

Re: Restaurants--Food Service Establishments--Licenses

Synopsis: A grocery store or convenience store which sells prepared sandwiches in individual portions, whether for consumption on or off the premises, constitutes a "food service establishment" for which a license is required by K.S.A. 1976 Supp. 36-501 et seq.

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Dear Mr. Corbett:

You request our opinion concerning the applicability of the food service and lodging licensing requirements of K.S.A. 1976 Supp. 36-501 et seq. to grocery stores, supermarkets and convenience stores which sell prepared food in individual portions generally for consumption off the immediate premises.

In an opinion dated December 8, 1967, Attorney General Robert Londerholm concluded that Kwik-Shop stores, convenience grocery stores which sold individual portions of prepared food which were generally consumed off the store premises, constituted "restaurants," as that term was defined by K.S.A. 1976 Supp. 36-301(c). He stated that

"any retail store which sells individual portions of food to the public falls within

Mr. Robert M. Corbett  
Page Two  
October 24, 1977

broad scope of the definition of a restaurant. Indeed, the operation which you are questioning differs little from a sandwich shop, roadside stand or food vending machine."

Since that time, the food service and lodging licensing act has been amended in some parts. See K.S.A. 1976 Supp. 36-501 et seq. K.S.A. 1976 Supp. 36-503(a) provides that it shall be

"unlawful for any person to engage in the business of conducting a food service establishment unless such person shall have in effect a valid license therefor issued by the secretary of health and environment . . . ."

The term "food service establishment" is defined by K.S.A. 1976 Supp. 36-501(e) to mean

"any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial-feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge."

It is urged by the Dillon company, you indicate, that the food service licensing law does not apply to their stores which sell prepared sandwiches in individual portions, on the grounds that the sandwiches are prepared in Hutchinson, and not on the store premises, and that there are no facilities provided for consumption on the store premises. The definition quoted above, enacted in 1975, is broader and more inclusive than that applied by General Londerholm in 1967. Clearly, the legislature did not intend to

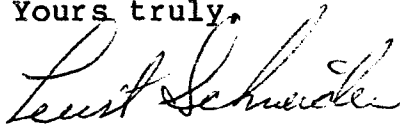
Mr. Robert M. Corbett  
Page Three  
October 24, 1977

restrict application of the licensing law in any fashion as construed and applied prior thereto. The amended language specifically includes "any place in which food is served," and "any place in which food . . . is prepared for sale or service on the premises or elsewhere." The lack of facilities for on-premise consumption is not, thus, determinative, nor is the fact that the sandwiches are prepared elsewhere than on the store premises. The sandwiches are provided for sale to the vendor's customers on the store's premises, and whether they are served to individual purchasers by waiters or waitresses, or made available through self-service merchandising, nonetheless, the food is served on the premises in prepared individual portions, and this fact subjects the premises to the licensing requirements of the act. The breadth of the 1975 amendment suggest a clear legislative purpose to include every operation in which processed edible substances are made available to consumers, to provide adequate state inspection of the conditions under which food is prepared, stored or served, in the interest of the public health. This interest is clearly at issue, in my judgment, in any operation in which prepared foodstuffs are provided for sale in individual portions to the public, such as the sale of prepared sandwiches as described in your letter. The 1975 amendment represents, if anything, an approval of the 1967 opinion of General Londerholm, and a clear legislative direction to broaden, rather than to restrict, the application of the act. I find no justification to recede from the 1967 opinion.

This interpretation is supported further by the decision in State v. Helgerson, 212 Kan. 412, 511 P.2d 221 (1973). There, the defendants sold hot dogs from several concession stands at the Henry Levitt Arena on the Wichita State University campus. Precooked hot dogs and buns were delivered to the appellee's cooler, located at the arena, and later transferred to various concession stands where they were warmed and offered for sale. Whether the sandwiches involved in the present instance are warmed on the premises, the operation there is distinctly analogous to that described in Helgerson, in which the applicability of the licensing act was undisputed, the sole issue being whether separate licenses were required for each stand, as distinguished from one license for the entire operation.

It is therefore my opinion that a retail store which sells individual portions of prepared food to consumers falls within the definition of a food service establishment in K.S.A. 1976 Supp. 36-501(3), for which a valid license is required.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

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