



STATE OF KANSAS

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October 19, 1979

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ATTORNEY GENERAL OPINION NO. 79- 240

Mr. Frank L. Korte
County Attorney, Sumner County
Sumner County Courthouse
Wellington, Kansas 67152

Re: Intoxicating Liquors and Beverages--Cereal Malt
Beverages--Meaning of Term "Original and Unopened
Container" as Used in K.S.A. 41-2702

Synopsis: The term "original and unopened container" as used
in K.S.A. 41-2702 refers to a can or bottle, as
opposed to a draught, of beer, and does not refer
to an entire six-pack or case.

* * *

Dear Mr. Korte:

In your letter of September 26, 1979, you request the opinion
of this office upon the following question: Does the language
of K.S.A. 41-2702 (referring to "original and unopened con-
tainers") deal with a single can of beer or the box or binding
which holds six cans together to form a six pack?

Your inquiry deals with language which appears in K.S.A. 41-2702
dealing with license requirements for the sale of cereal malt
beverages. In part, the statute reads as follows:

Mr. Frank L. Korte
Page Two
October 19, 1979

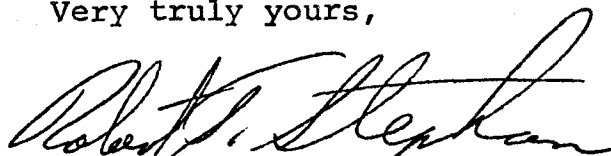
"The board of county commissioners of the several counties or the governing body of a city shall issue a license upon application duly made as otherwise provided for herein, to any person engaged in business in said county or city and qualified to receive said license, to sell only at retail cereal malt beverages in original and unopened containers, and not for consumption on the premises. Said license fee to be not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) per year. No license issued under this act shall be transferable." (Emphasis added.)

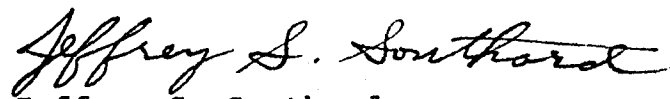
You question the scope of the term "original and unopened containers," and wish to know whether this refers to a six-pack or to individual cans (or bottles).

This problem was dealt with in an earlier opinion from this office, issued by then-Attorney General John Anderson on March 14, 1958, and written to the County Attorney in Johnson County. In the short opinion, the Attorney General discussed the above-quoted provision which has remained unchanged since the opinion and remains applicable to your inquiry. Attorney General Anderson based his opinion on the fact that earlier statutory language which spoke of "original and unbroken case lots" had been amended in favor of the present language which speaks of "unopened containers," thus indicating that the smaller unit is contemplated by the statute.

We would concur in this reasoning and in the result reached. We also note that it would appear that the statute draws a distinction between beer served in containers opened so as to be consumed on the premises, and that which is not. As both a six-pack and a single unopened can or bottle would fall in this latter category, no distinction should be made between them for the purposes of this statute.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Jeffrey S. Southard
Assistant Attorney General