



STATE OF KANSAS

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November 5, 1980

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ATTORNEY GENERAL OPINION NO. 80-241

Mr. Otis W. Morrow
Arkansas City Attorney
City Building
Arkansas City, Kansas 67005

Re: Taxation--Privilege Tax on Sales of Liquor by Clubs
--Application of Tax

Synopsis: Neither the act of consuming alcoholic liquor, nor the selling of soft drinks used for mixing with alcoholic liquor for consumption on public premises exempted from the prohibition of K.S.A. 1979 Supp. 41-719, subjects any persons so engaged to payment of the tax imposed under K.S.A. 1979 Supp. 79-41a02, since neither of those activities involves the sale of alcoholic liquors or drinks containing alcoholic liquors by licensed private clubs. Cited herein: K.S.A. 1979 Supp. 41-719, 41-2601, 79-41a01, 79-41a02.

* * *

Dear Mr. Morrow:

You advise that the city of Arkansas City owns a multi-purpose building known as the Agri-Business Building which is often used on holidays and other times by various civic organizations and individuals who lease the premises. You further advise that the City Commission is presently discussing the adoption of a charter ordinance by which the city would exempt itself from the nonuniform provisions of K.S.A. 1979 Supp. 41-719(c), so as to allow the consumption of alcoholic liquor by the lessees in the Agri-Business Building in hopes of increasing the use of the building and the resultant revenues from rents.

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In this context, you inquire whether either the act of consuming alcoholic liquor by the lessees or the act of selling of soft drinks used by lessees for mixing with alcoholic liquor for consumption in the Agri-Business Building subjects any persons so engaged to payment of the tax imposed by the provisions of K.S.A. 1979 Supp. 79-41a01 et seq. In our opinion, neither the act of consuming alcoholic liquor, nor the selling of soft drinks used for mixing with alcoholic liquor for consumption on public premises exempted from the prohibition of K.S.A. 1979 Supp. 41-719, subjects any persons so engaged to payment of said tax, for the following reasons.

K.S.A. 1979 Supp. 79-41a02 provides, in pertinent part:

"(a) There is hereby imposed, for the privilege of selling alcoholic liquor, a tax at the rate of ten percent (10%) upon the gross receipts derived from the sale of alcoholic liquor by any club.

"(b) The tax imposed by this section shall be paid by the consumer to the club and it shall be the duty of each and every club subject to this section to collect from the consumer the full amount of such tax, or an amount equal as nearly as possible or practicable to the average equivalent thereto."
(Emphasis added.)

K.S.A. 1979 Supp. 79-41a01 defines the term "gross receipts derived from the sale of alcoholic liquor" as "the amount charged the consumer for a drink containing alcoholic liquor, including any portion of that amount attributable to the cost of any ingredient mixed with or added to the alcoholic liquor contained in such drink." (Emphasis added.) "Club" means "an organization licensed [under K.S.A. 1979 Supp. 41-2601 et seq.] to which the club members shall be permitted to resort for the purpose of consuming alcoholic liquor." (Emphasis added.) K.S.A. 1979 Supp. 41-2601, 79-41a01.

Clearly, only those clubs licensed under the provisions of K.S.A. 1979 Supp. 41-2601 et seq. are subject to the tax in question. The tax is imposed "for the privilege of selling alcoholic liquor." K.S.A. 1979 Supp. 79-41a02(a). (Emphasis added.) While it is true that the tax is imposed on that amount of the cost of the drink attributable to the cost of any ingredient mixed with or added to the liquor, it is clear that the tax imposed is a tax on the sale of alcoholic liquor, a tax of ten percent (10%) of the amount charged

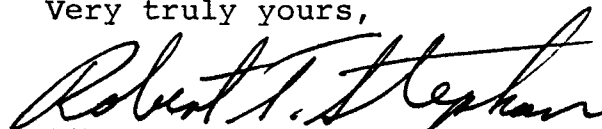
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to a consumer "for a drink containing alcoholic liquor." K.S.A. 1979 Supp. 79-41a01(c); K.S.A. 1979 Supp. 79-41a02(a). (Emphasis added.)

The activities you describe in posing your question do not, in our opinion, subject persons so engaged to payment of the tax imposed under K.S.A. 1979 Supp. 79-41a02. Neither the mere consumption of alcoholic liquor nor the selling of soft drinks, which the lessees may mix with alcoholic liquors, triggers the tax. The tax is only imposed on licensed private clubs in Kansas, for the privilege of selling drinks containing alcoholic liquor in said clubs. The activities you describe involve no clubs licensed under Kansas law, and involve no sales of alcoholic liquors or sales of drinks containing alcoholic liquors.

The foregoing opinion only determines the question you have raised pertaining to incidence of the privilege tax on the sale of alcoholic liquors in private clubs. We express no opinion concerning the scope of the city's legislative authority to provide substitute or additional provisions in a charter ordinance exempting the city from the provisions of K.S.A. 1979 Supp. 41-719 that would permit the consumption of alcoholic beverages under circumstances that would otherwise be proscribed by various provisions of the Kansas liquor control act.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf