



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 11, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81- 271

M. T. Bringle
Sheriff of Labette County
Labette County Courthouse
Oswego, Kansas 67356

Re: Intoxicating Liquors and Beverages -- Kansas Liquor
Control Act; Cereal Malt Beverages -- Sale at Retail;
Forbidden on Certain Days

Synopsis: Pursuant to K.S.A. 41-712 and 41-2704, all licensed retail
liquor and cereal malt beverage establishments are prohibited
from selling alcoholic liquor or cereal malt beverages,
respectively, on the day of any national, state, county
or city election during the hours the polls are open.
However, these statutes do not prohibit such sales on the
day of a presidential preference primary election, question
submitted election or school district election when any
such election is not held on the day of a national, state,
county or city election. (Affirming Attorney General
Opinion No. 74-155, and withdrawing the letter opinion
published at VII Op. Att'y Gen. 657.)

For the purposes of K.S.A. 41-712 and 41-2704, the term
"political area" means that geographic territory over
which the governing body to which officials seek election
exercises jurisdictional authority. Cited herein: K.S.A.
25-2009, 25-2502, K.S.A. 1980 Supp. 25-2503, K.S.A. 41-712,
41-902, 41-2704, 41-2711.

*

*

*

M. T. Bringle
Page Two

Dear Sheriff Bringle:

You have requested our opinion as to the scope of the term "political area" as used in K.S.A. 41-712. Since your request also refers to the operation of taverns, it is apparent you inquire as to the scope of the term "political area" as used in K.S.A. 41-2704, as well. Due to the fact that numerous informal inquiries have been received by both this office and the Alcoholic Beverage Control Division of the Kansas Department of Revenue regarding the application of K.S.A. 41-712 and 41-2704 with respect to elections, we have taken the liberty of responding to your request with a comprehensive review of these statutes.

K.S.A. 41-712 provides, in pertinent part:

"No person shall sell at retail any alcoholic liquor:
(1) on the day of any national, state, county, or city election, including primary elections, during the hours the polls are open within the political area in which such election is being held. . . ."

Similar language is contained in K.S.A. 41-2704 which provides, in part:

"[N]o cereal malt beverages may be sold between the hours of twelve midnight and six a.m. or on Sunday or on the day of any national, state, county or city elections, including primary elections, during the hours the polls are open, within the political area in which such election is being held."

Prior to considering your specific question regarding the meaning of "political area" as used in these statutes, it is appropriate to note that neither the statutes quoted above nor the acts of which they are a part provide any assistance in defining the elections referenced by these statutes. However, the terms "national election," "state election," "county election" and "city election" are defined in K.S.A. 1980 Supp. 25-2503, as follows:

"(a) 'National election' means the election of members of the United States House of Representatives, members of the United States Senate or members of the United States Presidential electoral college.

"(b) 'State election' means the election of state officers elected on a statewide basis, members of the House of Representatives and State Senators, members of State Board of Education, district judges, associate district judges, district magistrate judges and district attorneys.

"(c) 'County election' means the election of such county officers as are provided by law to be elected.

"(d) 'City election' means the election of such city officers as are provided by law to be elected."

Additionally, the term "primary election" is defined in subsection (b) of K.S.A. 25-2502, as follows:

"(b) 'Primary election' means the election held on the first Tuesday in August of even numbered years, the election held four (4) weeks preceding the election on the first Tuesday in April, and any other preliminary election at which part of the candidates for special elections to any national, state, county, township, city or school office are eliminated by the process of the election, but at which no officer is finally elected."

We think it necessary and appropriate to apply the foregoing definitions to the provisions of 41-712 and 41-2704, by virtue of the second rule of statutory construction in K.S.A. 77-201, which states:

"Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such peculiar and appropriate meaning."

We think it abundantly clear that the terms defined above are phrases that have acquired "a peculiar and appropriate meaning in law." In fact, absent reference to the pertinent definitions in the state's general election laws, there would be no rational basis for determining the meaning of these terms in 41-712 and 41-2704.

With this in mind it is also appropriate to review relevant prior opinions of this office. In a letter opinion issued by this office in 1971, it was determined that K.S.A. 41-712 and 41-2704 apply to school elections, as well as those elections which are expressly stated. VII Op. Att'y Gen. 657 (1971). This conclusion was predicated on the language of K.S.A. 25-2009 which provides, in part: "All laws applicable to elections, the violation of which is a crime, shall be applicable to school elections." In the foregoing opinion, it is noted that violations of K.S.A. 41-712 and 41-2704 are crimes pursuant to the provisions of K.S.A. 41-902 and 41-2711, respectively. Hence, based on the conclusory finding that K.S.A. 41-712 and 41-2704 are "laws applicable to elections," it was reasoned

that these statutes would apply to school elections.

We cannot agree with this analysis, for it is our opinion that K.S.A. 41-712 and 41-2704 are not "laws applicable to elections." Rather, these statutes are laws forbidding the sale of alcoholic liquor and cereal malt beverages during certain hours and on selected days, including the day of any national, state, county or city election during the hours the polls are open. Accordingly, we must reject the rationale and conclusion set forth in Vol. VII, Opinions of the Attorney General, p. 657, and it is our opinion that K.S.A. 41-712 and 41-2704 do not prohibit the retail sale of alcoholic liquor and cereal malt beverage on the day of a school district election.

Our opinion as to the application of these statutes is premised on the maxim of expressio unius est exclusio alterius, that is, the express mention of one thing operates as an implied exclusion of others. Such maxim has application where a statutory enumeration is not merely exemplary of the statute's scope and there is no indication that the legislature intended a scope broader than the enumeration. Johnson v. General Motors Corporation, 199 Kan. 720, 722 (1967). Here, the legislature has specifically identified those elections which give rise to the prohibitions on selling alcoholic liquor and cereal malt beverages, and there is nothing in either statute which suggests the legislature intended a broader application.

Moreover, construing these statutes in this fashion is consonant with the well established principle of statutory construction that criminal statutes should be strictly construed.

"Before considering the narrow issue before us a pertinent and well established principle of statutory construction must be noted. We are dealing with a criminal statute to which a strict construction must be applied. For reasons which stem from our fundamental concepts of individual human rights a criminal statute should not be extended by courts to embrace acts or conduct not clearly included within the prohibitions of the statute." State v. Waite, 156 Kan. 143, 145, 146 (1942).

In accord is State v. Logan, 198 Kan. 211 (1967), wherein the Court states: A penal statute should not be read so as to add that which is not readily found therein, or to read out what, as a matter of ordinary language, is in it." Id. at 213.

M. T. Bringle
Page Five

It should be noted, however, that in the event a national, state, county or city election is held in conjunction with a school district election, any portion of the school district within the affected political area would necessarily be subject to the prohibitions of K.S.A. 41-712 and 41-2704.

Based upon the preceding statutory definitions of national, state, county and city election, this office has opined that neither 41-712 nor 41-2704 requires closing of a retail liquor or cereal malt beverage establishment when the election is merely a "question submitted" election. Attorney General Opinion No. 74-155. The rationale for this opinion is that officials are not being elected; therefore, the election is not a national, state, county, city or school district election within the meaning of the statutory terms. Accordingly, we affirm the conclusion of Attorney General Opinion No. 74-155.

One final issue which, to the best of our knowledge, has not been considered by prior opinion involves the applicability of K.S.A. 41-712 and 41-2704 to presidential preference primary elections. In light of the extensive analysis regarding the nature of a presidential primary set forth in Attorney General Opinion No. 80-34, it is our opinion that a presidential preference primary is not a national, state, county or city general or primary election within the meaning of these terms, as defined in K.S.A. 1980 Supp. 25-2503 and K.S.A. 25-2502. In that regard, the prohibitions of K.S.A. 41-712 and 41-2704 are not applicable on the day of a presidential preference primary election.

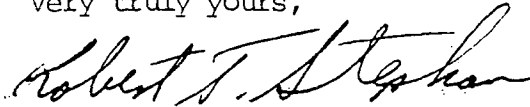
Having considered these collateral issues, we now address your specific request that the term "political area" be defined. Our research fails to reveal any statute or case law in this jurisdiction which expressly defines this term. In light of the fact that the scope of K.S.A. 41-712 and 41-2704 have been construed to apply to elections in which officials are elected to various governing bodies, it is our opinion that political area means the geographic territory over which the governing body to which the official seeks election exercises jurisdictional authority. In this respect, whenever the election involves the election of national, state, county, or city officials, the entire geographic territory of the state, county or city, respectively, is subject to the provisions of K.S.A. 41-712 and 41-2704.

We are not unmindful of the fact that there may be occasions in which particular districts or wards within a political area as defined are not involved in an election of officials from their particular district or

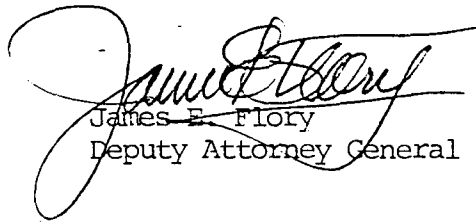
M. T. Bringle
Page Six

ward; however, we believe that the foregoing definition is consistent with the language of the statute which obviously limits the accessibility of alcoholic liquor and cereal malt beverage during the hours the polls are open. Since the term "political area" follows the enumeration of "national, state, county and city," it is our opinion that the term is merely a restatement of these previously identified political areas.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



JAMES E. FLORY
Deputy Attorney General

RTS:JEF:may