



STATE OF KANSAS

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June 10, 1982

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ATTORNEY GENERAL OPINION NO. 82-123

Craig D. Kershner
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P. O. Box 967
235 East Pearl
Dighton, Kansas 67839

Re: Intoxicating Liquors and Beverages -- Cereal Malt
Beverages -- Issuance of Retailers' Licenses

Synopsis: The authority of a township concerning the issuance of licenses for the retail sale of cereal malt beverages is limited to the powers specifically enumerated in K.S.A. 41-2702. That statute provides the township board's only authority regarding the issuance of any such license for premises situated within the township. Such authority is limited to the submission of advisory recommendations thereon to the board of county commissioners. Accordingly, a township board has no express or implied authority to prohibit or restrict the issuance of such licenses. Similarly, since there is no express or implied authority for calling or holding an election of the township's electors to consider the question of prohibiting or restricting the issuance of licenses for the retail sale of cereal malt beverages in the township, the issuance of such licenses may not be prohibited or restricted by a vote of the township's electors. Cited herein: K.S.A. 41-2701, 41-2702.

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Dear Mr. Kershner:

As county attorney for Lane County, you have requested our opinion regarding the issuance of cereal malt beverage licenses. In particular, you have asked whether "there is any

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procedure wherein the electorate of a Township, by election process, can restrict or prohibit the issuance of retailers licenses for the sale of cereal malt beverages under K.S.A. 41-2701 et seq., without regard to those qualifications recited in K.S.A. 41-2702."

The following provisions of K.S.A. 41-2702 are pertinent to your request:

"(a) No retailer shall sell any cereal malt beverage without having first secured a license for each place of business as herein provided. In case such place of business is located within the corporate limits of a city then the application for license shall be made to the governing body of such city. In all other cases the application for license shall be made to the board of county commissioners in the county in which such place of business is to be located, except that the application for license to sell on railway cars shall be made to the director as hereinafter provided.

"(b) A board of county commissioners shall not issue or renew a retailer's license without giving the clerk of the township where the place of business is to be located written notice by registered mail of the filing of the application for licensure or renewal. The township board may within ten (10) days file advisory recommendations as to the granting of such license or renewal and such advisory recommendations shall be considered by the board of county commissioners before such license is issued. If an original license is granted and issued, the board of county commissioners shall grant and issue renewals thereof upon application of the license holder, if the license holder is qualified to receive the same and the license has not been revoked as provided by law.

. . . .

"(f) 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 retailer engaged in business in said county or city and qualified to receive said license, to sell only cereal malt beverages in

original and unopened containers, and not for consumption on the premises. The annual license fee for such license shall be not less than twenty-five dollars (\$25) or more than fifty dollars (\$50)." (Emphasis added.)

In light of the foregoing provisions, several observations can be made. First, by subsection (a) of this statute the legislature has vested in the board of county commissioners of each county the authority for licensing cereal malt beverage retailers whose places of business are situated outside the corporate limits of cities. Second, with regard to the issuance of such licenses, subsection (b) of K.S.A. 41-2702 limits townships, acting through their respective boards of trustees, to an advisory role. A township board may file "advisory recommendations" with a board of county commissioners regarding the issuance of a cereal malt beverage retailer's license for an establishment situated within the township, but the board of county commissioners is required only to consider these recommendations and such recommendations do not restrict or otherwise alter the power of the board of county commissioners to determine whether the license should issue.

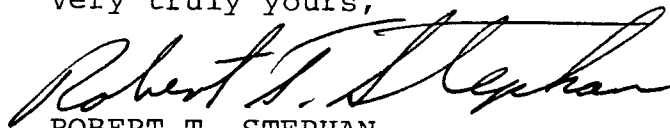
Finally, we are unaware of any other statute which vests any greater authority in a township board regarding licenses for the retail sale of cereal malt beverages. Nor are we aware of any statute which either expressly or impliedly authorizes an election by a township's electors to consider a proposition to prohibit or restrict the issuance of such licenses in the township. In this regard, we note the well-established principle of law that "[p]olitical subdivisions have only such powers as are expressly granted or necessarily incident to those granted. (State, ex rel., v. Rural High School District No. 7, 171 Kan. 437, 233 P.2d 727; Wichita Public Schools Employees Union v. Smith, 194 Kan. 2, 397 P.2d 357.)" Tilton v. Riley County, 194 Kan. 250, 256 (1965). More specifically, as stated in Paul v. Topeka Township Sewage District, 199 Kan. 394, 399 (1967): "A township is created by the state and has only such power and authority as may be conferred upon it by statute. (Salt Creek Township v. Bridge Co., 51 Kan. 520, 33 Pac. 303.)" See, also, Township Board of Ash Creek v. Robb, 166 Kan. 138, 139 (1948).

Accordingly, based on the above-cited authorities regarding the power and authority of a township, it is our opinion that the authority of a township concerning the issuance of licenses for the retail sale of cereal malt beverages is limited to the powers specifically enumerated in K.S.A. 41-2702. That statute provides the township board's only authority regarding the issuance of any such license for premises situated

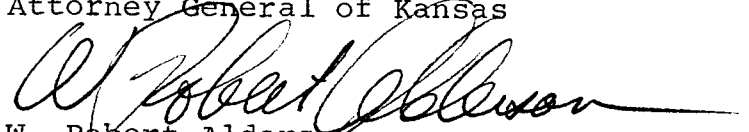
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within the township. Such authority is limited to the submission of advisory recommendations thereon to the board of county commissioners. Accordingly, a township board has no express or implied authority to prohibit or restrict the issuance of such licenses. Similarly, since there is no express or implied authority for calling or holding an election of the township's electors to consider the question of prohibiting or restricting the issuance of licenses for the retail sale of cereal malt beverages in the township, the issuance of such licenses may not be prohibited or restricted by a vote of the township's electors.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

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