



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

July 9, 1984

ATTORNEY GENERAL OPINION NO. 84- 68

Honorable Vernon L. Williams  
Representative, 91st District  
2402 Coolidge  
Wichita, Kansas 67204

Re: Intoxicating Liquors and Beverages--Prohibited Acts and  
Penalties--Sale of Intoxicating Liquors on Credit

Synopsis: Kansas statutes prohibit the sale of alcoholic liquor at retail through the extension of credit. This is true even where the licensed retail seller in Kansas is not the entity which extends the credit, in that any pattern of sale that involves the use of credit cards is illegal. Further, any sale of alcoholic liquor by a licensed Kansas retailer through an unlicensed out-of-state promoter is illegal. Finally, the placing of brochures on a retailer's counter which advertise alcoholic liquor, whether one brand or several brands, is likewise prohibited. Cited herein: K.S.A. 41-714, 41-717 and 41-901.

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Dear Representative Williams:

As State Representative for the 91st District, you have requested our opinion on the legality of an out-of-state gift purchase program for alcoholic liquor called 800 Spirits. It is our understanding from your letter and the enclosed brochure that the program functions somewhat like this:

- (1) The purchaser calls a toll free number and gives the operator his order, a name and address for the recipient, a message to accompany the gift, and his credit card number.

- (2) The order is then relayed to a participating retail liquor store in Kansas.
- (3) The liquor store "...fills out a money order type check and deposits it to his firm's account in the bank as he would cash or a personal check."
- (4) The named recipient of the gift is contacted and told that he can come to the retail liquor store to pick it up.

You first ask whether this transaction constitutes a credit sale in violation of the Kansas liquor laws. The applicable statute is K.S.A. 41-717, which states:

"No person shall sell or furnish alcoholic liquor at retail to any person on credit or on a passbook, or order on a store, or in exchange for any goods, wares or merchandise, or in payment for any services rendered; and if any person shall extend credit for such purpose, the debt thereby attempted to be created shall not be recoverable at law. No retailer of alcoholic liquor shall accept a check for payment of alcoholic liquors sold by him other than the personal check of the person making such purchase."

Arguably the retail store is not selling on credit because it receives the money immediately. However, the purchaser of the alcoholic liquor is buying on credit, in that the 800 Spirits brochure makes it clear that the only way a customer can buy liquor is by use of a credit card. Thus, while the retailer himself may not have violated K.S.A. 41-717 directly as that statute relates to sales on credit, the underlying transaction does involve a sale of liquor on credit and is therefore illegal.

This office had occasion to discuss the proper interpretation of K.S.A. 41-717 in a 1981 opinion (Attorney General Opinion No. 81-266, a copy of which is attached). That opinion dealt primarily with the question of purchasing alcoholic liquor by means of electronic fund transfers. However, the subject of indirect credit sales was also discussed.

"Admittedly, such transaction may involve the extension of credit by a financial institution to the consumer....

Such an arrangement, though, is no more reflective of or akin to a credit transaction from the retailer's standpoint than is an agreement between a consumer and the consumer's bank authorizing the bank to cover insufficient fund checks or maintain a certain balance in a checking account. Moreover, an electronic fund transfer system is not equipped to allow

the arrangement of consumer loans, either through the financial institution or any third party involved in the transaction. Thus, even though the purchase of alcoholic liquor or cereal malt beverages by means of an electronic fund transfer may involve a financial institution's extension of credit to the purchaser, unlike the proposal to use credit cards for the purchase of such beverages, it does not necessitate the retailer's participation in such indebtedness." Attorney General Opinion No. 81-266, page 5.

As is stated in that earlier opinion, electronic fund transfers "...may involve the extension of credit..." (emphasis added). By contrast, every transaction through 800 Spirits involves an extension of credit. A retailer who sells alcoholic liquor by electronic fund transfer, like a retailer who takes a personal check, has no way of knowing whether or not the payor's bank may automatically extend credit to cover a shortage. In the case of 800 Spirits, as is stated in the brochure, every transaction does involve a credit sale. Accordingly, it is our opinion that sales of alcoholic liquor through 800 Spirits include sales of alcoholic liquor on credit in violation of K.S.A. 41-717.

It should also be emphasized that the transaction between 800 Spirits and the local Kansas retail liquor dealer may violate K.S.A. 41-717 as well. The last sentence of that statute states, "No retailer of alcoholic liquor shall accept a check for payment of alcoholic liquors sold by him other than the personal check of the person making such purchase." In your letter, you state that the retail liquor dealer fills out a "money order type check" which he then deposits to his account. Without seeing this document it is impossible to state with certainty that it violates K.S.A. 41-717, but it appears to be a violation in that it is not a personal check from the purchaser.

Secondly, you ask whether it is legal for the retailer to place brochures from 800 Spirits on his counter for customers to pick up. K.S.A. 41-714 makes it illegal for any person to advertise alcoholic liquor by means of handbills. Brochures, whether actively distributed on street corners or simply left on a store counter for customers to pick up, would fall under the general definition of a handbill. Although it advertises several brands rather than just one brand, this brochure still promotes certain brands over others and solicits sales of alcoholic liquor. Thus, it is our opinion that the brochure is a handbill that advertises alcoholic liquor in violation of K.S.A. 41-714.

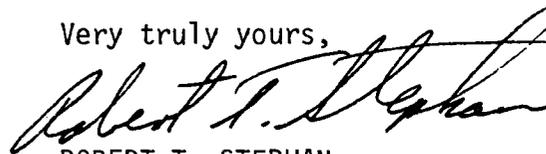
Finally, although you did not so inquire, we are constrained to note that 800 Spirits is additionally in violation of K.S.A. 41-901. That statute makes it illegal for anyone to sell alcoholic liquor without a license. While the actual delivery of the alcoholic liquor to the recipient takes place in the retail liquor store, 800 Spirits through its service is selling alcoholic liquor as well. K.S.A. 1983 Supp. 41-102(q) defines a "sale" for the purposes of the Kansas Liquor Control Act as "...any transfer, exchange or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person,

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whether principal, proprietor, agent, servant or employee." This definition is clearly broad enough to encompass the activities of 800 Spirits.

For the above reasons, it is our opinion that sales of alcoholic liquor by local retail liquor dealers through 800 Spirits (as that service is described in your letter of March 28, 1984, and the accompanying brochure) would violate K.S.A. 41-717. It is also our opinion that the placing of brochures describing 800 Spirits in retail liquor stores would violate the prohibition against advertising alcoholic liquor by means of handbills in K.S.A. 41-714. Further, it is our opinion that 800 Spirits itself would be in violation of K.S.A. 41-901 by selling alcoholic liquor in Kansas without a license.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Richard Hodson  
Assistant Attorney General

RTS:RH:bf  
Enclosures