



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 4

John A. Lamb
Director
Alcoholic Beverage Control Division
Department of Revenue
700 Jackson, 2nd Floor
Topeka, Kansas 66603

Re: Intoxicating Liquors and Beverages -- Licensing --
Persons to Whom Licenses Not Issued

Synopsis: K.S.A. 1984 Supp. 41-311(b)(5) provides that a retailer's liquor license may not be issued to a "copartnership" unless each copartner is individually qualified to be licensed, while paragraph (6) prohibits the issuance of such a license to a corporation. While a limited partnership resembles a corporation in certain respects, such as the protection from liability of the limited partners, who resemble shareholders, it is nonetheless a form of partnership. Accordingly, in the absence of specific language concerning a limited partnership, the requirements of paragraph (5), rather than the prohibitions of paragraph (6), should be applied in the issuance of a retailer's liquor license to a limited partnership. Cited herein: K.S.A. 1984 Supp. 41-311, K.S.A. 56-125, 56-128, 56-131, 56-134, 56-136, 56-138.

* * *

Dear Mr. Lamb:

As Director of the Alcoholic Beverage Control Division of the Department of Revenue, you request our opinion on a question involving the issuance of retailer's licenses under the Kansas Liquor Control Act, K.S.A. 41-101 et seq. Specifically, you

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inquire about K.S.A. 1984 Supp. 41-311(b), which lists those persons who may not obtain a retailer's license. In that limited partnerships are not mentioned in the list, you wish to know how applications from such entities should be treated.

The two paragraphs of interest in K.S.A. 1984 Supp. 41-311(b) are numbers (5) and (6). The former prohibits the issuance of a retailer's license to a "copartnership," unless all of the "copartners" are individually eligible for a license. This language refers to the requirements found in subsection (a) of the statute, wherein 14 separate qualifications are listed. Accordingly, each member of a copartnership [a term which is synonymous with partnership, Black's Law Dictionary, p. 303, 5th ed. (1979)] must meet the requirements of subsection (a) before the copartnership may be issued a retailer's license under subsection (b).

Paragraph (6) of K.S.A. 1984 Supp. 41-311(b) prohibits the issuance of a retailer's license to a corporation under any circumstances. As was noted in a previous opinion of this office (No. 83-165), there are a number of similarities between a limited partnership and a corporation. This is particularly true when the legal duties and liabilities of a shareholder in a corporation and a limited partner are compared. For example, limited partners may contribute only money or property, not services (K.S.A. 56-125), and may not become involved in the business affairs of the partnership. In these regards, they are like shareholders of a corporation, who invest capital through their purchase of stock but who are not entitled to actual control of the operations of the corporation.

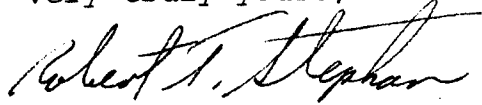
Such similarities notwithstanding, however, a limited partnership is not a corporation, but is a special type of partnership, created by statute, containing features not found in a common-law partnership. State v. Williams, 196 Kan. 274 (1966). These include protection from partnership debts (K.S.A. 56-128, 56-138) and a limited role in the partnership's business affairs. Columbia Land and Cattle Co. v. Daly, 46 Kan. 504 (1981); K.S.A. 56-128. In other respects, a limited partner has the same rights as a general partner, as in the areas of compensation (K.S.A. 56-136), loaning money to and transacting business with the partnership (K.S.A. 56-134) and access to information and in dissolution proceedings. K.S.A. 56-131.

Accordingly, while the legislature may wish to amend K.S.A. 1984 Supp. 41-311 to specifically make mention of limited partnerships and perhaps create less rigorous requirements for those persons

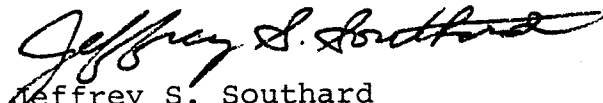
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acting as limited partners, it is our opinion that at present your office is required to apply the standards of K.S.A. 1984 Supp. 41-311(b)(5). Therefore, all partners, whether limited or general, would have to meet the qualifications of subsection (a) of the statute before a license could be issued under subsection (b).

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw