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April 15, 1985

ATTORNEY GENERAL OPINION NO. 85- 37

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

Re: Intoxicating Liquors and Beverages -- Licensing and  
Regulation of Clubs -- Premises Licensed

Synopsis: K.S.A. 41-2608 requires that a private club license be issued for a particular premises specified in the application and in the license. Nothing in the statute or in the Private Club Act, K.S.A. 41-2601 et seq., prevents a private club from including one or more rooms in a facility which also has areas open to the general public. As long as the consumption of alcoholic liquor is restricted to the areas described in the license, other portions of the facility, such as corridors and restrooms, may be shared by both club members and members of the public, and employees of the club may carry alcoholic beverages across such non-club areas for consumption in the described premises. Cited herein: K.S.A. 41-2608, 41-2619, 41-2621, K.A.R. 14-18-26.

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Dear Mr. Lamb:

As Director of the Alcoholic Beverage Control Division of the Kansas Department of Revenue, you request our opinion on a question concerning the licensing of private clubs. Specifically, you inquire whether organizations licensed under the Private Club Act, K.S.A. 41-2601 et seq., may have portions of their facilities designated as the private club area, and other parts left open to the public, with common areas, such as restrooms and hallways, shared by both groups. Further, you inquire if the physical presence of alcoholic liquor in such public areas (i.e. while it is being carried to a private area by an employee of the club) would constitute violation of the act.

The Private Club Act was enacted into law in 1965 and is intended to restrict the consumption of alcoholic liquor to those places which are not open to the general public. One such area is a private club licensed by the Alcoholic Beverage Control Division. Two of the statutes which regulate the issuance of these licenses are K.S.A. 41-2608 and 41-2621, which state as follows:

K.S.A. 41-2608.

"The license provided herein shall be issued for one particular premises which shall be stated in the application and in the license. No license shall be issued for a premises which is or will be used as a clubhouse or clubroom unless the city, township or county zoning code allows a clubhouse or clubroom at that location." (Emphasis added.)

K.S.A. 41-2621.

"A club license shall allow the licensee to operate a club only at the premises specified in such license in accordance with the provisions of this act and the rules and regulations adopted by the director." (Emphasis added.)

In view of the above, you ask whether a private club may properly allow consumption of alcoholic liquor in certain areas which are described in the application and license, and yet have areas which are open to the general public in which no liquor is

consumed, and still other areas which are shared by both groups of patrons (i.e. restrooms, waiting areas, hallways, and so forth). Such an arrangement could entail the transporting of alcoholic beverages across public or non-club areas by club employees, but would limit consumption to those areas specifically described in the application and license.

In our opinion, nothing in the above-quoted statutes or in the Private Club Act would preclude the practice described above, whereby certain portions of the facility are denominated as being the premises upon which alcoholic liquor may be consumed. Restricting access to such areas to club members and their guests (and, in the case of reciprocal clubs, to reciprocal club members) would comply with the purpose of the Private Club Act. The act is intended to enforce the constitutional ban on open saloons, which are defined as those places where alcoholic liquor is served to and consumed by members of the general public without discrimination as to who may drink. State ex rel. Schneider v. Kennedy, 225 Kan. 13 (1978). Further, the language of K.S.A. 41-2619 provides an indication of the broad scope which is encompassed by the concept of a private club, for there it is provided that the unauthorized operation of any "establishment, room or place purporting to be a club" is grounds for issuance of a search warrant. From this, and in the absence of any indication that the term "premises" used in K.S.A. 41-2608 and 41-2621 means the entire building which houses the private club, we are justified in concluding that a license may, subject to the rules and regulations of the division, describe particular areas in which alcoholic liquor may be consumed, to the exclusion of all other areas open to or shared with the general public.

In the same way, the mere carrying or transporting by a club employee of alcoholic beverages ordered by a private club member across an area not described as part of the club, such as a hallway, would not be inconsistent with the Private Club Act. Provided that consumption by club members or guests did not occur in such non-club areas, the legislative intent to keep private and public areas separate would be upheld. Removal of liquor from the licensed club premises is already prohibited by K.A.R. 14-18-26, and enforcement of this rule and regulation would guard against the removal of alcoholic beverages by patrons from specifically described areas.

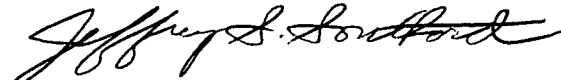
In conclusion, K.S.A. 41-2608 requires that a private club license be issued for a particular premises specified in the application and in the license. Nothing in the statute or in the

Private Club Act, K.S.A. 41-2601 et seq., prevents a private club from including one or more rooms in a facility which also has areas open to the general public. As long as the consumption of alcoholic liquor is restricted to the areas described in the license, other portions of the facility, such as corridors and restrooms, may be shared by both club members and members of the public, and employees of the club may carry alcoholic beverages across such non-club areas for consumption in the described premises.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Deputy Attorney General

RTS:JSS:crw