



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
ANTITRUST: 296-5299

May 8, 1985

ATTORNEY GENERAL OPINION NO. 85- 44

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
Related Provisions -- Classes of Persons to Whom
Licenses Not Issued; Conviction of Violation of
Intoxicating Liquor Laws

Synopsis: K.S.A. 1984 Supp. 41-311 provides that no liquor
license of any kind shall be issued to a person who
has been convicted of a violation of the intoxicating
liquor laws of a state, such as driving under the
influence of alcohol or selling liquor to a minor.
For the purposes of this statute, a conviction under a
city ordinance for offenses involving intoxicating
liquor should be considered as a violation of the
liquor laws of the state, and so precludes a person
from obtaining a license of the types set forth at
K.S.A. 1984 Supp. 41-304. Cited herein: K.S.A.
1984 Supp. 8-1567; K.S.A. 21-3610; K.S.A. 1984
Supp. 41-304; 41-311; Kan. Const., Art. 12, §5.

*

*

*

Dear Mr. Lamb:

As Director of the Alcoholic Beverage Control Division of the Department of Revenue, you request our opinion concerning the construction which should be given to K.S.A. 1984 Supp. 41-311. That statute, which is contained in the licensing article of the Kansas Liquor Control Act, K.S.A. 41-101 et seq., sets forth classes of persons who may not obtain liquor licenses of the several types set forth at K.S.A. 1984 Supp. 41-304. One of the different disqualifying factors is the conviction of a violation of the liquor laws of a state. K.S.A. 1984 Supp. 41-311(a)(3). You inquire whether a conviction of a city ordinance involving intoxicating liquor, such as driving under the influence of alcohol or selling liquor to a minor, would have the effect of being a conviction of a liquor law of the state.

At the present time, there can be no question that a person who is convicted of driving under the influence of alcohol (K.S.A. 1984 Supp. 8-1567) or selling liquor to a minor (K.S.A. 21-3610) is included within the class described at K.S.A. 1984 Supp. 41-311(a)(3). See Keck v. Cheney, 196 Kan. 535, 537 (1966), Smith v. Herrick, 172 Kan. 65, 69 (1951). What remains to be considered is the effect of a conviction of a city ordinance adopted pursuant to K.S.A. 1984 Supp. 8-1567(1) (in the case of DUI) or the general home rule authority given a city under Article 12, Section 5 of the Kansas Constitution.

Although Kansas authorities on this subject are few in number, they are sufficient, both in their reasoning and their relevancy to this inquiry, for us to conclude that a violation of a city ordinance which concerns intoxicating liquor is included under K.S.A. 1984 Supp. 41-311(a)(3). In the case of City of Kansas City v. Jordan, 99 Kan. 814 (1917), the defendant was charged with a violation of a municipal ordinance prohibiting the transporting of intoxicating liquors. In response to a challenge that the ordinance should not be considered a law of the State of Kansas, the court found that the ordinance had been passed by the city under authority given by the legislature to provide for the general welfare. "The ordinances of the city are local laws, passed under the authority of the state." 99 Kan. at 821. While the general welfare statute cited in the case has been repealed, it has been replaced by the broader provisions of Article 12, Section 5, which also provide a city with the authority to enact ordinances which relate to local matters. Accordingly, the holding of the court as to the effect of an ordinance remains

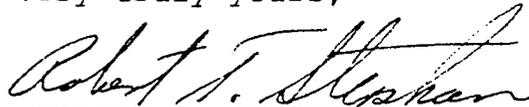
valid, leaving the ordinances of a city in effect laws of a state.

Although not an appellate court decision, the case of Murphy v. Robey, District Court of Kingman County, 7 Kan. L. Rev. 227 (1958), is in agreement with the above conclusion. There, the director of the Alcoholic Beverage Control Division had determined that a conviction by a Wichita man of a city ordinance against public drunkenness constituted grounds to deny a liquor license under the terms of then-K.S.A. 41-311. The district court, in determining that such a violation was properly considered as being under the intoxicating liquor laws of the state, stated:

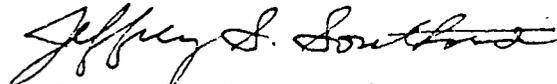
"As I view the authorities, no hard and fast rule can be or has been laid down to determine the question now before the Court. Whether 'law' or 'laws of any state' include city ordinances must be determined from the context, intent and purport of the particular statute or constitution provision. In this particular case it may be remarked, perhaps facetiously, that while the applicant did not plead guilty to a state 'law,' he did plead guilty to the identical offenses as a city 'law' and thus unquestionably to the 'laws of any state.' It seems to me that in Section 41-311 of the Kansas Liquor Control Act, the legislature went to great lengths in providing qualifications for a retail liquor license and that the main purpose sought to be achieved was licensees of high moral character and respect for law and order. While it may be said that if the legislature had intended to make violations of city ordinances under the intoxicating liquor laws a disqualification, they could easily have done so by including such in section 3 of the act. [sic] Yet, it is hardly conceivable that the legislature, in the light of all the other provisions, would not have considered one or more violations of a city ordinance pertaining to intoxicating liquor as disqualifying." 7 Kan. L. Rev. at 228-29.

In conclusion, K.S.A. 1984 Supp. 41-311 provides that no liquor license of any kind shall be issued to a person who has been convicted of a violation of the intoxicating liquor laws of a state, such as driving under the influence of alcohol or selling liquor to a minor. For the purposes of this statute, a conviction under a city ordinance for offenses involving intoxicating liquor should be considered as a violation of the liquor laws of the state, and so precludes a person from obtaining a license of the types set forth at K.S.A. 1984 Supp. 41-304.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw