STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 2, 1985

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

ATTORNEY GENERAL OPINION NO. 85- 95

John A. Lamb, Director
Alcoholic Beverage Control Division
Department of Revenue
700 Jackson, 2nd Floor
Topeka, Kansas 6603

Re: Intoxicating Liquors and Beverages -- Licensing and Regulation of Clubs -- Prohibited Acts and Practices; Offering of Free Drinks

Synopsis: The prohibition against the providing of "free drinks" in 1985 Session Laws Chapter 173, sections 4(a)(1) and 5(a)(1), includes only drinks given away at no cost and does not include drinks sold at a price less than the seller's cost. Cited herein: K.S.A. 77-201, Second; L. 1985, ch. 173.

* * *

Dear Mr. Lamb:

As Director of the Alcoholic Beverage Control Division of the Department of Revenue, you request our opinion on the meaning of the phrase "free drink" as used in 1985 Session Laws Chapter 173, sections 4(a)(1) and 5(a)(1). (Therein, holders of private club licenses and licenses to sell cereal malt beverage are prohibited from offering or serving a "free drink" to a customer.) Specifically, you ask whether "free drink" includes only drinks given away at no cost or whether it also includes drinks sold at less than the seller's cost, i.e. a draw of beer sold for a dime.

It is a general rule of statutory construction that legislative intent is to be determined, if possible, from the language of the statute where the language is plain and unambiguous. See, State of Kansas v. V.F.W. Post No. 3722, 215 Kan. 693 (1974). See also, United States v.

O'Brien, 686 F.2d 850 (10th Cir. 1982) (clear and unambiguous statute must be given effect according to its plain meaning without reference to legislative history); Pillsbury Co. v. Atchison, Topeka and Santa Fe Railway Co., 548 F.Supp. 28 (D. Kan. 1982) (where language is clear and unambiguous there is no need to resort to further rules of construction to ascertain meaning). Thus, we may assume the legislature intended the plain meaning of the phrase "free drink."

K.S.A. 77-201, Second states:

> "Words and phrases shall be construed according to the context and approved usage of the language, but technical words and phrases, and other words and phrases that have acquired a particular and appropriate meaning in law, shall be construed according to their particular and appropriate meaning."

Since "free drink" is not a technical phrase, we must construe it according to its approved usage. The American Heritage Dictionary defines "free" in an economic context as "costing nothing; gratuitous" and this definition conforms to the accepted common usage of the word "free."

Since there is no ambiguity in the statute, the legislative intent should be ascertained from the language. The phrase "free drink" must be construed according to its approved usage, and so must refer to a drink provided without cost, i.e. gratuitous. Thus, the prohibition against the providing of "free drinks" in sections 4(a)(1) and 5(a)(1) of chapter 173 of the 1985 Session Laws includes only drinks given away at no cost, and does not include drinks sold at a price less than the seller's cost. Had the legislature intended to proscribe the latter practice, it could easily have done so, and we are not prepared to add by implication that which was not done directly.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Jeffrey S. Southard

Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:WJ:crw