



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 104

Rod Ludwig
Mitchell County Attorney
P.O. Box 10
Beloit, Kansas 67420

Re: Intoxicating Liquors and Beverages -- Cereal Malt Beverages -- Standards of Conduct; Prohibition on Consumption by Persons Under Age

Synopsis: A holder of a cereal malt beverage license may partition his building in such a way that the area in which cereal malt beverages are sold is permanently divided from another area in which dances are held. Depending upon the description of the premises in the license application, the county commission may issue a cereal malt beverage license for either the entire building or only the partitioned area in which sales occur. In either event, the licensee is responsible for seeing that persons under the legal age do not consume, purchase or possess cereal malt beverages in or about the place of business, which includes the area partitioned off for dancing. A failure to do so may result in the revocation of the owner's license. Cited herein: K.S.A. 41-719; 41-2602; 41-2608; 41-2704 and 41-2708, both as amended by L. 1985, ch. 171.

* * *

Dear Mr. Ludwig:

As Mitchell County Attorney, you have requested our opinion concerning the desire of a licensed tavern owner to divide his premises with a permanent and complete partition, with the

south side used as a tavern and the north side used as a dance facility. The tavern owner wishes to have his license cover only the south side of the building, although the entire location was designated as a tavern in a previous license. The owner acknowledges that persons under the legal drinking age will attend the dances, but will be hand-stamped to prevent them from entering the tavern or purchasing cereal malt beverages. Individuals from the tavern will be able to enter the dance facility and take their drinks with them.

You first inquire whether the tavern owner may conduct his business in the manner described. If the county commission determines that the dance facility and tavern are two distinct places of business, and the description of the place of business in the license application includes only the south side of the premises, a license for only the tavern portion of the building may be issued. If such a license is approved, there is no statutory prohibition on maintaining a dance area in a separate part of the facility and allowing persons of all ages to attend. As opposed to the laws regulating private clubs (K.S.A. 41-719, 41-2602, 41-26087, nothing in the cereal malt beverage statutes precludes persons of legal age from bringing beer into the dance portion of the building, as long as the purchase was completed in the tavern. In this regard, see City of Baxter Springs v. Bryant, 226 Kan. 383 (1979), where a city's attempt to prohibit dancing on the premises of a cereal malt beverage licensee were found to be unreasonable and so void.

A second possible concern stems from the fact that cereal malt beverages would be permitted in the dance facility. The county commission has expressed fears that this practice would allow those under the legal drinking age to have easy access to beer, leaving possession and consumption by such individuals hard to control. The applicable law in this area is found at K.S.A. 41-2704(e), as amended by L. 1985, ch. 171, §6, which states:

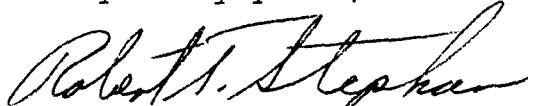
"No licensee shall permit a person under the legal age for consumption of cereal malt beverage to consume or purchase any cereal malt beverage in or about a place of business, and no licensee shall permit a person under the legal age for consumption of cereal malt beverage to possess cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than

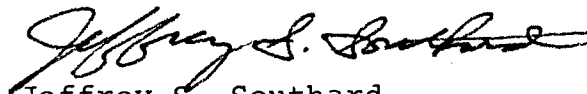
18 years of age may dispense or sell
cereal malt beverage" (Emphasis
added.)

The dance facility clearly falls within the scope of "in or about a place of business." The dance area is in the same building as the tavern and is separated from it by only a partition. Because the dance facility is "in or about" the tavern, it is the duty of the licensee to in effect "police" those under the legal age who attend dances and insure that they do not consume, purchase or possess beer either in this area or in the tavern itself. If a licensee violates this statute, his license may be revoked. K.S.A. 41-2708(a)(2) and (5), as amended by L. 1985, ch. 171, §7. If revoked, state law prohibits the issuance of a new license for six months. K.S.A. 41-2708(c), as amended.

In conclusion, a holder of a cereal malt beverage license may partition his building in such a way that the area in which cereal malt beverages are sold is permanently divided from another area in which dances are held. Depending upon the description of the premises in the license application, the county commission may issue a cereal malt beverage license for either the entire building or only the partitioned area in which sales occur. In either event, the licensee is responsible for seeing that persons under the legal age do not consume, purchase or possess cereal malt beverages in or about the place of business, which includes the area partitioned off for dancing. A failure to do so may result in the revocation of the owner's license.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw