



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 23

David W. Andreas  
Assistant City Attorney  
City of Winfield  
State Bank Building  
Winfield, Kansas 67156

Re: Intoxicating Liquors and Beverages -- Cereal Malt  
Beverages -- Local Regulations

Synopsis: Attorney General Opinion No. 79-261, which states that a city may, by local ordinance, exclude minors from the premises of establishments licensed to sell cereal malt beverages, is re-affirmed. The principles stated in that opinion apply equally to persons between the ages of eighteen and twenty-one, especially as they fall under the new minimum drinking age. Cited herein: K.S.A. 21-3610; K.S.A. 1985 Supp. 41-2704; 77-201; Thirty-fifth.

\* \* \*

Dear Mr. Andreas:

You have asked us to review Attorney General Opinion No. 79-261, regarding the legality of a city or county utilizing a local ordinance to exclude from taverns all persons who are under the legal age for consumption of cereal malt beverages. Of particular concern in your inquiry is the recent state legislation which raises the minimum age from 18 to 21 by stages.

Our prior opinion is based on 18 as the minimum age for consumption of cereal malt beverages because that was the limit in 1979. That opinion also uses the term "minor" to

describe those young people who would be excluded from taverns (licensed businesses that sell cereal malt beverages for on premises consumption). That term is not defined in the state statutes that govern cereal malt beverages. However, the term is defined in various ways in other statutes (18 years of age or younger in K.S.A. 1985 Supp. 77-201, Thirty-fifth; 21 years of age or younger in K.S.A. 21-3610). Thus, the exact meaning ascribed to this term varies according to the particular context.

Within the context of Attorney General Opinion No. 79-261, the term "minor" is used interchangeably with the concept of persons who are 18 years old or under. No extra or special significance should be attached to the use of this term. The principles that are enunciated in that opinion would apply equally to a city or county ordinance that would ban all young people under the age of 21 from taverns, when 21 becomes the official minimum age.

Accordingly, based on Attorney General Opinion No. 79-261, it is our opinion that the City of Winfield could legally exclude all persons under the age of 21 from all establishments licensed to sell cereal malt beverages for on-premises consumption, or any person who is under the legal age for consumption of cereal malt beverage as determined by state law at the time.

In light of the recent amendments to the cereal malt beverage statutes one other change remains to be considered. Laws 1985, chapter 171, section 6 amends K.S.A. 41-2704(e) to prohibit the possession of cereal malt beverage on a licensed premise by any person who is under the minimum legal age:

". . . except that a licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage if:

"(1) the licensee's place of business is licensed only to sell cereal malt beverage in original and unopened containers and not for consumption on the premises; or

"(2) the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of

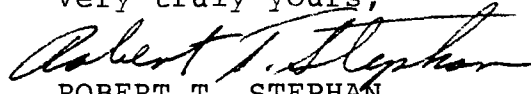
food for consumption on the premises of  
the licensed place of business."


The new statute, which took effect on July 1, 1985, allows 18 year-olds to serve and to sell cereal malt beverages in grocery stores and restaurants, but by its terms does not apply to taverns.

As Opinion No. 79-261 makes clear, city or county ordinances may be more restrictive than state law, as long as those ordinances do not conflict with state law. The new statute quoted above is permissive in nature. It states that an 18 year-old restaurant employee may serve and sell cereal malt beverages. Because of the permissive nature of that statute, a city ordinance that will ban all young people under 21 years of age from taverns which is applicable to patrons and employees alike, would not be in conflict with state law.

In summary, a city ordinance imposing a total ban on the presence of persons under 21 years of age in taverns, or any variation on such a total ban that would not be discriminatory against classes of individuals or businesses, would not be in conflict with current state statutes.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Richard Hodson  
Assistant Attorney General

RTS:JSS:RH:crw