



STATE OF KANSAS

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May 13, 1986

ATTORNEY GENERAL OPINION NO. 86- 72

Stan Martin
City Attorney
306 North Cedar
P.O. Box 595
Abilene, Kansas 67410

Re: Intoxicating Liquors and Beverages -- Cereal Malt
Beverages -- Employment of Violators of
Intoxicating Liquor Laws as Grounds for License
Revocation or Suspension

Synopsis: The express language of K.S.A. 1985 Supp.
41-2708(a)(10) states that a county or city shall
suspend or revoke the license of a cereal malt
beverage licensee if the licensee employs any
person who has been adjudged guilty of any
violation of the intoxicating liquor laws. The
legislature has distinguished between managerial
and other types of employees, however, in allowing
a licensee to employ as a manager or agent any
person convicted of an intoxicating liquor law, as
long as the conviction occurred more than two years
prior to the date the licensee made application for
the license. Cited herein: K.S.A. 41-2703; K.S.A.
1985 Supp. 41-2708.

* * *

Dear Mr. Martin:

As Abilene City Attorney, you request our opinion on a
question concerning the application of K.S.A. 1985 Supp.

41-2708(a)(10). Specifically, you inquire as to the extent of the prohibition of employment by cereal malt beverage licensees of persons who have been convicted of violating intoxicating liquor laws. As this inquiry focuses upon K.S.A. 1985 Supp. 41-2708(a)(10) and cereal malt beverages, this opinion will discuss the law applicable to the request; an opinion of parallel law applicable to private clubs and liquor stores is omitted.

K.S.A. 1985 Supp. 41-2708(a)(10) states:

"(a) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:

. . . .

"(10) the employment of persons who have been adjudged guilty of felony or of any violation of the intoxicating liquor law;"

The above statute appears to compel suspension or revocation of the cereal malt beverage licensee's license if such licensee employes anyone, in any capacity, who has been found guilty of an intoxicating liquor law violation. It is a fundamental rule of statutory construction that where no ambiguity exists, it is presumed conclusively that the clear and explicit terms of the statute express legislative intent and that the plain terms of the statute are to be applied and given effect. [See Johnson v. General Motors Corp., 199 Kan. 720 (1967) and State v. Bagemehl, 213 Kan. 210 (1973)]. No exceptions or meanings may be added that are not suggested by the language of the statute. [See Southwestern Bell Telephone Company v. Employment Security Board of Review, 210 Kan. 403 (1972)]. However, to ascertain legislative intent, courts are required to construe all parts of legislation in pari materia. Brown v. Keill, 224 Kan. 195 (1978).

K.S.A. 41-2703 states, in part:

"(b) No retailer's license shall be issued to:

.
"(4) A person who within two (2) years immediately preceding the date of making application has been convicted of a felony, any crime involving a moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

.
"(7) A person whose place of business is conducted by a manager or agency unless the manager or agent possesses all the qualifications of a licensee"

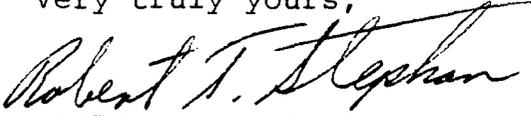
K.S.A. 41-2703 would appear to allow a licensee to employ as a manager or agent a person convicted of an intoxicating liquor law, as long as the conviction occurred more than two years prior to the date the licensee made application for the license. The legislature has thus distinguished between managerial and other types of employees. For a more complete discussion of this aspect, see Attorney General Opinion No. 82-80, a copy of which is enclosed.

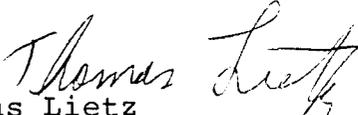
The language of K.S.A. 1985 Supp. 41-2708(a)(10) is clear. Upon proper notice, the City shall suspend or revoke a person's license if he or she employs someone adjudged guilty of a violation of the intoxicating liquor laws. No exception exists for the employee who serves the beverage, cleans the building after hours or tallies the receipts of the establishment a month after the beverage sale, though K.S.A. 41-2703(b)(4) and (7) make an exception for those employed in a managerial capacity. The licensee does have the right to appeal such action by the city. K.S.A. 1985 Supp. 41-2708(c).

In conclusion, the express language of K.S.A. 1985 Supp. 41-2708(a)(10) prohibits a cereal malt beverage licensee from employing in any capacity a person adjudged guilty of any violation of the intoxicating liquor laws. The legislature has distinguished between managerial and other types of employees, however, in allowing a licensee to employ as a

manager or agent any person convicted of an intoxicating liquor law, as long as the conviction occurred more than two years prior to the date the licensee made application for the license.

Very truly yours,


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Thomas Lietz
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RTS:JLM:TL:crw