



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 86- 93

E. Edward Johnson
City Attorney
215 E. 7th Street, Room 353
Topeka, Kansas 66603

Re: Intoxicating Liquors and Beverages -- Cereal Malt
Beverages -- License Application

Synopsis: It would be improper for the governing body of a city to designate the City Clerk or other administrative person to issue cereal malt beverage licenses. K.S.A. 41-2703, case law and opinions of this office provide that the issuance of a license requires some discretion and mandate that the governing body of a city must be the license grantor. Cited herein: K.S.A. 41-2702; 41-2703.

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Dear Mr. Johnson:

As Attorney for the City of Topeka, you request our opinion concerning K.S.A. 41-2701 et seq. Specifically, you are concerned with the propriety of the governing body of a city authorizing the City Clerk or other appropriate individual as the administrative person to process applications and to issue cereal malt beverage licenses. This would be done without submitting the applications to the governing body for consideration and vote. You reason that this action would be appropriate in that the issuance of such licenses is a purely perfunctory administrative action.

K.S.A. 41-2702 states in part:

"(a) No retailer shall sell any cereal malt beverage without having first secured a license for each place of business as herein provided. In case such place of business is located within the corporate limits of a city then the application for license shall be made to the governing body of such city"

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

"(a) After examination of an application for a retailer's license, the board of county commissioners or the director shall, if they approve the same, issue a license to the applicant. The governing body of the city shall, if the applicant is qualified as provided by law, issue a license to said applicant."

The statute then lists discretionary and mandatory reasons for refusing the issuance of a license. K.S.A. 41-2703.

Case law and opinions of the Attorney General have interpreted the perfunctory/discretionary dichotomy of licensing referred to in your opinion request. See, e.g., *Linguist v. City of Lindsborg*, 165 Kan. 212 (1948) wherein it was held that even if an applicant for a cereal malt beverage license within a city is qualified under the act, he is not entitled to a license as a matter of right. He is merely an applicant for a privilege which the city governing body may grant or deny in accordance with the exercise of its own honest judgment and discretion. See also *Curless v. Board of County Commissioners*, 197 Kan. 580 (1966) in which the provisions of the Cereal Malt Beverage Act imposes a duty upon the county commissioners to grant and issue a renewal license when no objection has been filed; Opinions of the Attorney General, Vol VI, p. 88 (1973); Vol. VII, pp. 658, 659, 600, 667, 668 (1974); Vol VIII, p. 688 (1974); and Attorney General Opinion No. 83-70.

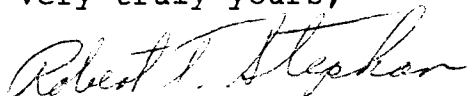
Aside from the fact that the act of issuing a license is not totally perfunctory, it appears that the statute itself precludes the performance of such act by anyone other than the governing body of the city. It is a fundamental rule of

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).

The language of K.S.A. 41-2703 is clear: "The governing body of the city shall, if the applicant is qualified as provided by law, issue a license to said applicant." In our opinion, the legislature intended that the governing body of a city shall issue cereal malt beverage licenses. This authority was not intended to be delegated, regardless of whether or not the issuance is a perfunctory function. Of course, a governing body may use its City Clerk to process applications and recommend their approval to the governing body. The power of issuance, however, must remain with the governing body of the city.

In conclusion, it would be improper for the governing body of a city to designate the City Clerk or other administrative person to issue cereal malt beverage licenses. The law mandates that the governing body of a city must be the license grantor.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General