



STATE OF KANSAS

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July 14, 1986

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ATTORNEY GENERAL OPINION NO. 86-99

John A. Lamb
Director, Alcoholic Beverage Control
Department of Revenue
700 Jackson Street, Jayhawk Tower
Topeka, Kansas 66603

Re: Intoxicating Liquors and Beverages -- Licensing and
Related Provisions; City Option -- Ability of a
Retail Liquor Licensee to be a Riley County
Commissioner

Synopsis: Though K.S.A. 1985 Supp. 41-311(a)(7) provides that
no license for the retail sale of alcoholic liquor
shall be issued to a person who appoints or is a
law enforcement official, the prohibitive mandates
and layers of procedure found in Kansas statutory
law create an attenuation sufficient to allow a
retail liquor licensee to hold the office of Riley
County Commissioner under specified circumstances.
As a commissioner/licensee, the person should not
serve on the county law enforcement agency
established pursuant to K.S.A. 19-4427 et seq.,
nor vote in selecting the commissioner and county
resident who are to serve upon the agency. These
actions, coupled with existing law, would remove
the person from the prohibition of K.S.A. 1985
Supp. 41-311(a)(7), thus allowing the person to
serve as a commissioner while holding a retail
liquor license. Cited herein: K.S.A. 1985 Supp.
19-4427; K.S.A. 19-4428; 19-4429; 19-4430; 19-4431;
K.S.A. 1985 Supp. 22-2202; 41-311.

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Dear Mr. Lamb:

As Director of Alcoholic Beverage Control for the State of Kansas, you request our opinion concerning K.S.A. 1985 Supp. 41-311(a)(7) and (9). Specifically, you are concerned with whether a retail liquor licensee may hold the office of Riley County Commissioner.

Riley County has elected to adopt the provisions of K.S.A. 19-4424 to 19-4445, inclusive, and amendments thereto. These statutes allow Riley County to create a county law enforcement agency, a county law enforcement department, and the position of director of the county law enforcement department, and in addition have the effect of consolidating all city and county law enforcement units.

K.S.A. 1985 Supp. 19-4427 states in part:

"(a) Subject to the provisions of subsection (b), there is hereby established in all counties adopting the provisions of this act a county law enforcement agency which shall be known as the ' _____ (name of county) county law enforcement agency.' Each agency shall have seven members who shall be selected in the following manner: One member shall be a member of the board of county commissioners of the county, selected by such board of commissioners; one member shall be a resident of the county, to be selected by the board of county commissioners;

. . . .

"Members of the agency shall not receive compensation,"

The statute then establishes the option of the voters of the county to petition for the right to directly elect the members of the county law enforcement agency. K.S.A. 1985 Supp. 19-4427(b). This option has yet to be exercised in Riley County.

The county law enforcement agency is responsible for the enforcement of law and the providing of police protection throughout the county. As such, the agency is authorized to

appoint a law enforcement director, provide for other law enforcement officers, establish salaries, purchase equipment, require records, contract with other agencies, and adopt rules and regulations necessary for the organization of the agency as well as the county law enforcement department. K.S.A. 19-4429.

K.S.A. 19-4430 states in part:

"There is hereby established in all counties adopting the provisions of this act a county law enforcement department, which shall be composed of a director, assistant director and such other officers and personnel as the agency shall provide by resolution. Such department shall be under the exclusive supervision and control of the director and no member of the agency shall interfere by individual action with the operation of the department or the conduct of any of the officers or other personnel of such department. The director shall be responsible to the agency for the operation and administration of the department and for the enforcement of law and providing of police protection within the county in conformance with rules and regulations adopted by such agency."
(Emphasis added.)

K.S.A. 19-4428 states in part:

"Members of [the] agency shall meet in the office of the county attorney . . . at least once each month at a time and place which shall be fixed by resolution"

K.S.A. 1985 Supp. 41-311(a) states in part:

"No license of any kind shall be issued to a person:
. . . ."

(7) who appoints or is a law enforcement official . . . ; [or]

. . . .

(9) who at the time of application for renewal of any license issued under this act would not be eligible for the license upon a first application;"

As a Riley County Commissioner, the retail liquor licensee, along with the other commissioners, would have the power to select one commissioner and one county resident that would be agency members. K.S.A. 1985 Supp. 19-4427. In our opinion, the enumerated statutory mandates and the "layers of procedure" between a commissioner and the actual appointment of law enforcement officers create a sufficient attenuation to alleviate a breach of K.S.A. 1985 Supp. 41-311(a)(7) or (9).

The first prong of our analysis hinges upon whether a member of the county law enforcement agency is a "law enforcement official" for the purposes of K.S.A. 1985 Supp. 41-311(a)(7). K.S.A. 19-4429 states the county law enforcement agency as a whole is responsible for the enforcement of law and the providing of police protection throughout the county. However, reading K.S.A. 19-4424 to 19-4445, inclusive, and amendments thereto, and K.S.A. 1985 Supp. 22-2202 in pari materia reveals that no one individual agency member is necessarily a law enforcement official. K.S.A. 1985 Supp. 22-2202(13) states:

"'Law enforcement officer' means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, parole officers and directors, security personnel and keepers of correctional institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority."

Read in toto, the status of an individual agency member as a law enforcement official is tenuous. Even as a whole, the agency merely oversees the director in a purely administrative manner. The agency meets once a month and receives no compensation. The director is salaried, actually enforces the law as a law enforcement officer and provides police protection through his law enforcement officers and law enforcement personnel.

K.S.A. 1985 Supp. 41-311(a)(7) prohibits law enforcement officials from acquiring intoxicating liquor and beverage licenses. In our opinion, the legislature never intended this prohibition to include members of the Riley County law enforcement agency because the agency members are not themselves law enforcement officials. Read as a whole, the statutes are intended to prevent liquor licensees from having access to, or receiving, special treatment from law enforcement officials, such as quashing of investigations, prior warnings of investigations, etc. Proper application of the statutory schemata of K.S.A. 19-4424 to 19-4445, inclusive, and amendments thereto, coupled with Chapter 41 of the K.S.A., reduces the potential of this abuse.

The second prong of our analysis hinges upon the power of the county commission to select one of their own as an agency member. If the agency member was a law enforcement official, then the licensee may be prohibited from holding the office of commissioner, since K.S.A. 1985 Supp. 43-311(a)(7) states no license may be issued to one who appoints a law enforcement official. In that it is our opinion that a county law enforcement agency member is not a law enforcement official, as defined by K.S.A. 1985 Supp. 22-2202(13), for the purposes of K.S.A. 1985 Supp. 41-311(a)(7), the issue is moot.

The third prong of our analysis hinges upon the issue of the licensee/commissioner being the commissioner selected to be an agency member. You have stated the licensee/candidate has given assurances that she would not be the commissioner that would be a member of the agency. This is crucial because as an agency member, the licensee would be a party to the appointment of the department director. K.S.A. 19-4429 to 19-4431. This would violate K.S.A. 1985 Supp. 41-311(a)(7), which states no license may be issued to one who appoints a law enforcement official.

The licensee/candidate may be further advised to buttress her assurances by abstaining from the vote which selects the commissioner and county resident as agency members, and state

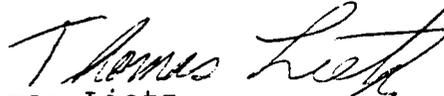
for the record her reason for abstention. These actions, coupled with the "no interference" and "exclusive control" mandates of K.S.A. 19-4430, and the "layers of procedure" described above, create sufficient attenuation to allow a licensee/Riley County Commissioner to operate within the perimeters of K.S.A. 1985 Supp. 41-311(a)(7) and (9).

In conclusion, the prohibitive mandates and layers of procedure found in Kansas statutory law create an attenuation sufficient to allow a retail liquor licensee to hold the office of Riley County Commissioner. As a commissioner/licensee, the person should not serve on the county law enforcement agency, nor vote in selecting the commissioner and county resident who are to serve upon the agency. This action, coupled with existing law, removes the person from the prohibition of K.S.A. 1985 Supp. 41-311(a)(7), thus allowing the person to serve as a commissioner while holding a retail liquor license.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
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