



STATE OF KANSAS

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October 7, 1986

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ATTORNEY GENERAL OPINION NO. 86- 142

Scott R. Condray
Cheyenne County Attorney
109 East Washington
P.O. Box 845
St. Francis, Kansas 67786

Re: Intoxicating Liquors and Beverages -- Cereal Malt
Beverages -- Cereal Malt Beverage Consumption on
County-Owned Property

Synopsis: Possession, consumption and transportation of
cereal malt beverages are regulated by K.S.A.
41-2701 et seq. Cereal malt beverages may be
consumed upon public property. Likewise, cereal
malt beverages may be consumed in a county building
that has been leased to an individual or
organization for a private party.

If an individual or organization wishes to sell
cereal malt beverages at a public function or a
private party, a cereal malt beverage license must
be obtained. If the public property is located
within the city limits, the application for such
license shall be made to the governing body of such
city. In all other cases, the application for
license shall be made to the board of county
commissioners in the county in which such place of
business is located.

The control of the consumption of cereal malt
beverages is not an area of concern exclusively
reserved by the state and, therefore, this opinion

is subject to any stricter county ordinance which may otherwise prohibit such activities. Cited herein: K.S.A. 19-101; 19-15,177; K.S.A. 1985 Supp. 41-2701; K.S.A. 41-2702; 41-2719; 41-2720.

* * *

Dear Mr. Condray:

As Cheyenne County Attorney, you request our opinion regarding the consumption of cereal malt beverages at public or private functions and on county property. More specifically, you ask:

1. Whether cereal malt beverages can be consumed on property owned by Cheyenne County;
2. Whether an organization or an individual leasing a building from Cheyenne County for a private party can sell or give away cereal malt beverages; and
3. Whether Cheyenne County can grant a cereal malt beverage license to an individual or an organization so that it may sell cereal malt beverages on the premises at a public function.

We begin by addressing your question regarding cereal malt beverage consumption on public property. Possession, consumption and transportation of cereal malt beverages are regulated by K.S.A. 41-2701 et seq. Except for restrictions upon cereal malt beverages in moving vehicles and the legal age of consumption, there are no pertinent statutes regarding cereal malt beverage consumption on public property. K.S.A. 1985 Supp. 41-2701; K.S.A. 41-2719; 41-2720; Attorney General Opinions No. 80-52; 84-51. It is therefore our opinion that cereal malt beverages may be consumed by persons of legal age while on public property.

Turning to your second question, whether an individual or organization leasing a building from Cheyenne County for a private party can sell or give away cereal malt beverages, K.S.A. 19-15,117 states:

"Any county owning or hereafter acquiring any public building may, except as otherwise specifically provided by law, lease any such building or any part

thereof, when the board of county commissioners shall by resolution determine that the same is not required for county purposes, for a period not exceeding one (1) year at a time, upon such terms and conditions as the board of county commissioners may deem to be in the best interest of the county."

K.S.A. 41-2702(a) states:

"(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. In all other cases the application for license shall be made to the board of county commissioners in the county in which such place of business is to be located, except that the application for license to sell on railway cars shall be made to the director as hereinafter provided."

If the county desires to lease its buildings for such functions, the standard of K.S.A. 19-15,117 is met. If the cereal malt beverage is sold, a license must be obtained from either the city or county as the case may be. K.S.A. 41-2702. If the beer is given away, however, no license is required. K.S.A. 41-2702; Attorney General Opinions No. 80-52; 84-51. It is our opinion, therefore, that an individual or organization leasing a building from Cheyenne County may sell or give away cereal malt beverages, with the appropriate license.

Turning to your final question, whether Cheyenne County can grant a cereal malt beverage license to an individual or organization so that it may sell cereal malt beverages on county-owned premises at a public function, it is our opinion that if Cheyenne County is the proper licensing authority pursuant to K.S.A. 41-2702, and if the applicant is otherwise qualified, Cheyenne County may issue the license to the applicant to sell the cereal malt beverages.

K.S.A. 19-101 grants counties the authority to exercise powers of home rule to determine their local affairs and government. Thus, if a state law does not apply uniformly to all counties, the county may promulgate conflicting local legislation. Pierce, Home Rule and Municipal Environmental Regulation in Kansas, 26 Kan. L. Rev. 535 (1978). The control of the consumption of cereal malt beverages is not an area of concern exclusively reserved by the state. City of Lyons v. Shuttle, 209 Kan. 735, 738 (1972). Therefore, counties may prescribe stricter regulations concerning cereal malt beverages. If this is the case, the county ordinance will take up where the state law left off.

In conclusion, possession, consumption and transportation of cereal malt beverages are regulated by K.S.A. 41-2701 et seq. Cereal malt beverages may be consumed upon public property. Likewise, cereal malt beverages may be consumed in a county building that has been leased to an individual or organization for a private party.

If an individual or organization wishes to sell cereal malt beverages at a public function or a private party, a cereal malt beverage license must be obtained.

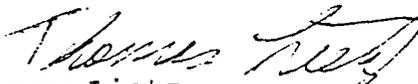
If the public property is located within the city limits, the application for such license shall be made to the governing body of such city. In all other cases, the application for license shall be made to the board of county commissioners in the county in which such place of business is located.

The control of the consumption of cereal malt beverages is not an area of concern exclusively reserved by the state and, therefore, this opinion is subject to any stricter county ordinance which may otherwise prohibit such activities.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General