



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 156

Albert D. Campbell  
Chairman, Alcoholic Beverage Control Board of Review  
Kansas Department of Revenue  
700 Jackson Street, Jayhawk Tower  
Topeka, Kansas 66612

Re: Intoxicating Liquors and Beverages -- Licensing and  
Related Provisions; City Option -- Appellate  
Procedure for a Liquor License Revocation

Synopsis: Due process does not require a trial de novo  
when a decision to revoke a liquor license is on  
appeal to the Alcoholic Beverage Control Board of  
Review, nor does the right to such a de novo  
hearing arise from statutory or case law. Cited  
herein: K.S.A. 1985 Supp. 41-320; 41-321, as  
amended by L. 1986, ch. 318, §46; K.A.R. 13-2-11;  
13-2-13; 14-16-3.

\* \* \*

Dear Mr. Campbell:

As chairman of the Alcoholic Beverage Control Board of Review (Board), you have requested our opinion regarding review procedures. Specifically, you inquire whether the Board must conduct a full evidentiary hearing (a trial de novo) when a ruling by the Division Director which suspends or revokes a license is appealed to the Board. Your opinion request letter indicates that the current practice is to distribute copies of the transcript from the initial hearing before the Director to members of the board prior to the appellate hearing. At the appellate hearing, both parties are provided an opportunity to present new evidence, as well as make oral arguments.

The revocation or suspension of a license, or imposition of a fine in lieu thereof, is adjudicative in nature. Prentise v. Atlantic Coast Line, 211 U.S. 210, 29 S. Ct. 67, 53 L.Ed. 150 (1908). When adjudicative facts are in dispute, a party is entitled to a trial type hearing. See generally, Ryan, Kansas Administrative Law §7-4, (KBA, 2d ed. 1985). The cornerstone case regarding due process requirements in an adjudicative administrative hearing is Rydd v. State Board of Health, 202 Kan. 721 (1969), in which it was held that the essential elements of due process are notice, an opportunity to be heard, and an opportunity to defend. These three rights are provided for in the initial license revocation or suspension hearing before the Director. K.S.A. 1985 Supp. 41-320; K.A.R. 14-16-3.

It is our opinion that these three rights of due process are adequately preserved in the hearing before the Director. Any other rights (i.e., the right to appeal the merits of a decision) would thus have to originate in other common or statutory law. In this case, the right to appeal is statutory. K.S.A. 1985 Supp. 41-321, as amended by L. 1986, ch. 318, §46, provides that an applicant or licensee who has been aggrieved by an order of the Director may appeal to the Board. The Department of Revenue has been directed to adopt rules and regulations it deems necessary to provide for a fair hearing of all appeals. K.S.A. 1985 Supp. 41-321, as amended by L. 1986, ch. 318, §46, states in part:

"At any such hearing, the applicant or licensee and the director may be present in person or by agent or counsel and present evidence and argument."

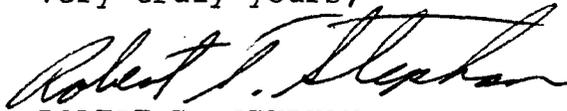
To implement this statute, the Department of Revenue has adopted K.A.R. 13-2-1 et seq.

It is our opinion that the statute and regulations do not require either a trial de novo or a full evidentiary hearing at the administrative appellate level. Presentment of evidence pursuant to K.S.A. 1985 Supp. 41-321, as amended by L. 1986, ch. 318, §46, is optional at the discretion of the petitioner, as is a personal appearance. In the absence of an appearance by the petitioner, either in person or by agent or council, the board is within its authority to either review the transcript, or, upon motion of the director and upon a finding of lawful notice, dismiss the appeal. K.A.R. 13-2-11 provides that the board may take judicial notice of its own public records. K.A.R. 13-2-13 allows any board member to

call for further evidence to be heard at the same hearing or at an adjourned hearing. In short, these provisions are not indicative of a mandatory trial de novo or a full evidentiary hearing. Current Board procedure appears to be well within the law and affords ample due process and fairness.

In conclusion, due process does not require a trial de novo when a decision to revoke a liquor license is on appeal to the Alcoholic Beverage Control Board of Review, nor does the right to such a de novo hearing arise from statutory or case law.

Very truly yours,



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