



STATE OF KANSAS

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January 9, 1987

ATTORNEY GENERAL OPINION NO. 87- 1

Edwin Wheeler, Jr.  
City Attorney  
203 North Third  
Marion, Kansas 66861

Re: Intoxicating Liquors and Beverages -- Cereal Malt  
Beverages -- Off-Premise Sales

Synopsis: Cereal malt beverage (CMB) licenses must state the place of business at which the beverages are to be sold. Delivery and retail sale of CMB to persons at their individual residences does not comply with the requirements of the licensing statutes. Cited herein: K.S.A. 41-2701; K.S.A. 41-2702; 84-2-105; 84-2-106; 84-2-401.

\* \* \*

Dear Mr. Wheeler:

As city attorney for the City of Marion, you request our opinion regarding whether a licensee, under Kansas law, can deliver cereal malt beverages (CMB) to a private resident. Specifically, you state that the City of Marion has granted a CMB license to the owners of a pizza parlör. Besides delivering pizza, the licensee desires to deliver and sell at retail CMB to customers who reside within the city limits of Marion as well as the out-lying areas of Marion County.

K.S.A. 41-2701(e) states:

"'Place of business' shall mean any place at which cereal malt beverages are sold."

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

"No retailer shall sell any cereal malt beverage without having first secured a license for each place of business as herein provided."

K.S.A. 41-2702(c) (3) states:

"An application for a retailer's license shall be verified and upon a form prepared by the attorney general of the state and shall contain:

. . . .

"(3) the particular place of business for which a license is desired;"

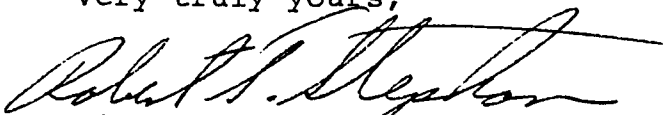
In our opinion, the licensing statutes require a CMB license to state the particular location where CMB retail sales will occur. (See also Attorney General Opinion 86-157, page 8).

The Uniform Commercial Code states generally that a "sale" occurs with the physical delivery of the goods, with the exchange of the money and the goods. (See generally K.S.A. 84-2-105, 84-2-106 and 84-2-401.) In this particular fact scenario, the sale of CMB would occur on the doorsteps of a multitude of City of Marion and Marion County residences. A multitude of CMB licenses would thus be required. Enforcement of the minimum age laws, etc., would also be made extremely difficult. One license to sell CMB at a particular pizza parlor permits the sale of CMB only at that particular location. Sale by delivery by a single-license licensee would be in violation of the licensing statutes.

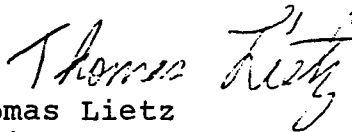
A further problem would arise during the sale outside the city limits of Marion. A CMB license, or licenses, would have to be issued by Marion County. K.S.A. 41-2702. Given the statutory language recited above, legislative redress appears to be the only recourse to allow the delivery and retail sale of CMB as described above.

In conclusion, cereal malt beverage licenses must state the place of business at which the beverages are to be sold. Delivery and retail sale of CMB to persons at their individual residences does not comply with the requirements of the licensing statutes.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Thomas Lietz  
Assistant Attorney General

RTS:JLM:TL:crw