



STATE OF KANSAS

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*K.S.A. 1987 Supp.
41-2704(b)(2) wa.
subsequently
amended to
allow local unit
of government
to prohibit sun
day sales.*

ATTORNEY GENERAL OPINION NO. 87- 74

The Honorable Keith Roe
State Representative, 109th District
State Capitol, 155-E
Topeka, Kansas 66612

Re: Intoxicating Liquors and Beverages -- Cereal Malt
Beverages -- Sunday Sales

Synopsis: Licensing restrictions on the sale of cereal malt beverages (CMB) which are imposed at the local level must be consistent with state law and reasonably related to permitted purposes, i.e. regulating moral, sanitary and health conditions of the places licensed. Upon publication of newly enacted legislation in the Kansas Register, Sunday sales of CMB will automatically be permitted across the state wherever CMB is currently allowed to be sold, if the place of business meets the 30% food sale conditions of K.S.A. 41-2704(b)(2), as amended. Local legislation which would prohibit sale of CMB on Sundays would be inconsistent with the provisions of the newly enacted law which allows for limited Sunday sales. Therefore, local units of government may not prohibit Sunday sales of CMB by ordinance or resolution.

Pursuant to K.S.A. 41-2704, as amended, the governing body of any city and the board of county commissioners of any county may reasonably regulate the hours that CMB may be sold. An attempt by the city or county to unreasonably restrict hours

of sale would not withstand court scrutiny. Cited herein: K.S.A. 41-2704, as amended by 1987 House Substitute for Substitute for Senate Bill No. 141.

* * *

Dear Representative Roe:

As Representative for the 109th District, you request our opinion on four questions regarding cereal malt beverages (CMB). Your first inquiry is:

"Must a city take affirmative action to prevent a licensee from selling [CMB] on Sunday?"

1987 House Substitute for Substitute for Senate Bill No. 141, Section 100, states in part:

"K.S.A. 41-2704 is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the requirements of this act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

"(b) Except as provided by subsection (g), no cereal malt beverages may be sold:

"(1) Between the hours of 12:00 midnight and 6:00 a.m.;

"(2) on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises and which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises" (Emphasis added).

The above-cited provision is to take effect and be in force from and after its publication in the Kansas Register. 1987

House Substitute for Substitute for Senate Bill No. 141, Sections 144 and 147. Section 100 has increased the privilege of every licensee in Kansas to sell CMB. In The City of Baxter Springs v. Bryant, 226 Kan. 383, 393 (1979), quoting Blue Star Supper Club, Inc. v. City of Wichita, 208 Kan. 731, 735 (1972), the court stated:

"The regulation of an occupation, trade or business is widely held to be a legitimate exercise of the police power, where the unrestricted pursuit of the same might adversely affect the public health, safety, morals or general welfare. This principle presupposes that the regulation is reasonable, is not arbitrary, and that it bears a logical connection with the objectives to be accomplished."

Not only must the local restriction be reasonable, it must be consistent with the provisions of the CMB act. K.S.A. 41-2704, as amended. As of the amendment's publication, the public policy of the State of Kansas, as recognized and codified by the legislature, will allow for the Sunday sale of CMB under certain conditions. Local government action which would ban Sunday CMB sales would be diametrically opposed to this legislative policy. Furthermore, K.S.A. 41-2704, as amended, states that local governments "may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions. . . ." In our opinion, prohibition of Sunday CMB sales would not be reasonably related to the moral, sanitary or health conditions of a licensed premises. Affirmative action to prevent a licensee from selling CMB on Sunday would be against public policy, and would be struck down as a matter of law. See City of Baxter Springs, 226 Kan. at 395. Therefore, we do not believe local units of government may prohibit Sunday sales of CMB, unless the legislature would specifically authorize such action.

Your second inquiry is:

"Are Sunday sales automatically permitted April 30?"

Pursuant to K.S.A. 41-2704, as amended, a licensee may sell CMB on Sundays after the publication of 1987 House Substitute for Substitute for Senate Bill No. 141 in the Kansas Register, if the licensee meets the 30% food conditions thereof. The next publication of the Register is scheduled

for April 30, 1987. In our opinion, no new action or relicensing activity is necessary. The legislature has merely expanded the privilege a licensee already possesses. Sunday sales, if the CMB licensee meets the new food requirements, are automatically permitted after the publication of the bill.

Your third inquiry is:

"May local units regulate the hours CMB may be sold?"

Pursuant to, and within the restriction of, K.S.A. 41-2704, as amended, a city or county may reasonably prescribe the hours of CMB sales.

Your fourth and final inquiry is:


"May the local unit prescribe closing hours such as zero on Thursdays or Sundays?"


Assuming that your inquiry asks whether a city or county may allow for twenty-four hours per day or zero hours per day of CMB sales, both of these scenarios would be in conflict with K.S.A. 41-2704, as amended. Twenty-four hour a day sales are specifically prohibited by subsection (b)(1). While subsection (a) allows local units of government to regulate hours of closing, such regulation must be reasonable, for the specific purposes stated in that provision, and consistent with the CMB act. K.S.A. 41-2704, amended. We believe it would be found unreasonable and inconsistent with the act for a local unit of government to regularly prescribe zero hours of operation.

In conclusion, licensing restrictions on the sale of cereal malt beverages (CMB) which are imposed at the local level must be consistent with state law and reasonably related to permitted purposes, i.e. regulating moral, sanitary and health conditions of the places licensed. Upon publication of newly enacted legislation in the Kansas Register, Sunday sales of CMB will automatically be permitted across the state wherever CMB is currently allowed to be sold, if the place of business meets the 30% food sale conditions of K.S.A. 41-2704(b)(2), as amended. Local legislation which would prohibit sale of CMB on Sundays would be inconsistent with the provisions of the newly enacted law which allows for limited Sunday sales. Therefore, local units of government may not prohibit Sunday sales of CMB by ordinance or resolution.

Pursuant to K.S.A. 41-2704, as amended, the governing body of any city and the board of county commissioners of any county may reasonably regulate the hours that CMB may be sold. An attempt by the city or county to unreasonably restrict hours of sale would not withstand court scrutiny. Cited herein: K.S.A. 41-2704, as amended by 1987 House Substitute for Substitute for Senate Bill No. 141.

Very truly yours,


ROBERT T. STEPHAN
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Thomas R. Lietz
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