



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 111

W. Lee Fowler
Chase County Attorney
302 Broadway, P.O. Box 640
Cottonwood Falls, Kansas 66845

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

Synopsis: K.S.A. 41-2704, as amended by L. 1987, ch. 182, § 100, and as further amended by L. 1987, ch. 183, § 4, authorizes Sunday sales of cereal malt beverages for on premises consumption in licensed establishments which meet the 30% food sale conditions and the local ordinance requirements of Section 4(b)(2), of L. 1987, ch. 183. Sunday carry out sales of cereal malt beverages are not authorized by the specific language contained in Section 4(b)(2). Cited herein: K.S.A. 41-2704, as amended by L. 1987, ch. 182, § 100, and by L. 1987, ch. 183, § 4; L. 1937, ch. 213, 214; Kan. Const., Art. 15, § 10.

* * *

Dear Mr. Fowler:

As Chase County Attorney, you have requested our opinion as to whether 1987 House Substitute for Substitute for Senate Bill No. 141 and 1987 House Bill No. 2615 (hereinafter referred to as L. 1987, ch. 182 and 183 respectively) will allow for Sunday carry out sales of cereal malt beverages when not prohibited by city ordinance and when sold by a business which

holds a retailer's license allowing on premise consumption as well as carry out sales.

Historically, legislation in the State of Kansas has either restricted or totally disallowed the sale of cereal malt beverages. This restriction or regulation of sales of cereal malt beverages has its roots in the original language of Article 15, § 10 of the Kansas Constitution adopted in 1880. At that time all sales of beverages containing alcohol were prohibited in the State of Kansas. In 1937, beverages which contained 3.2% or less alcohol by weight were given the classification of cereal malt beverages pursuant to L. 1937, ch. 213, §§ 1 and 2. L. 1937, ch. 214 was also enacted at that time, authorizing the licensed sale of cereal malt beverages. However, L. 1937, ch. 214, § 4 provided that, "no cereal malt beverages may be sold . . . on Sunday. . . ." (Emphasis added). This general legislative ban on Sunday sales of cereal malt beverages prevailed from 1937 until the effective date of the two statutes in question.

L. 1987, ch. 183, section 4 provides in part:

"K.S.A. 41-2704, as amended by section 100 of 1987 House Substitute for Substitute for Senate Bill No. 141, 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. . . ."

Section 4(b)(2) only authorizes Sunday sales of cereal malt beverages, "in a place of business which is licensed to sell cereal malt beverages for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food on the licensed premises. . . ." (Emphasis added). This language does not specifically address the issue of whether Sunday carry out sales of cereal malt beverages are authorized.

Section 4(b)(2), of 1987 House Bill No. 2615, is an exception to the general disallowance of Sunday sales of cereal malt beverages, and it should therefore be construed narrowly. A plain reading of Section 4(b)(2) would seem to authorize only sales of cereal malt beverages for "on premises consumption." All other Sunday sales of cereal malt beverages not specifically authorized by the Section 4(b)(2) exception are still prohibited. Strained interpretations of the exception found in Section 4(b)(2) should not be applied in order to circumvent or elude the plain meaning of the bill. Further, we believe a narrow interpretation of the exception found in Section 4(b)(2) is appropriate given the long history of restrictions placed on alcoholic beverages in the State of Kansas. Until there is statutory language which specifically authorizes Sunday carry out sales of cereal malt beverages, those types of cereal malt beverage sales should not be allowed based on the existing language contained in Section 4(b)(2).

Interpreting Section 4(b)(2) as excluding carry out sales of cereal malt beverages on Sunday is also supported by the legislative history surrounding the introduction of L. 1987, ch. 182. In a final report on Kansas alcoholic beverage control laws presented to Governor Carlin in December of 1986, the Kansas Liquor Law Review Commission recommended that sales and consumption of cereal malt beverages should be permitted on Sundays in all types of on-premise establishments. This recommendation speaks only of allowing Sunday sales of cereal malt beverages in "on-premise" establishments, meaning that the cereal malt beverage is to be consumed on the premises of the establishment. It does not specifically recommend "carry out" sales. See Attachment #1 of the January 21, 1987, Senate Federal and State Affairs Committee minutes. Also, Senator Edward F. Reilly, Jr., Chairman of the Senate Federal and State Affairs Committee which first introduced the bill, wrote in a memorandum dated

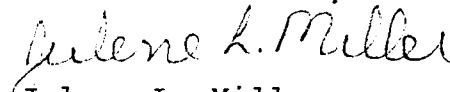
February 2, 1987, that although off-premise Sunday sales were discussed by the committee, they were not included in the bill. See Attachment #2 of the February 3, 1987, Senate Federal and State Affairs Committee minutes. Finally, if the legislature had intended to allow carry-out sales of cereal malt beverages, there would have been no need to confine those sales to establishments licensed for on-premises consumption which meet the 30% food sales requirement.

In conclusion, L. 1987, ch. 183, amending L. 1987, ch. 182, contains a specific exception to the general legislative disallowance of Sunday sales of cereal malt beverages. That exception, found in Section 4, of L. 1987, ch. 183, does not contain language specifically authorizing Sunday carry out sales of cereal malt beverages. Also, legislative history and indications of legislative intent support the premise that Sunday carry out sales of cereal malt beverages are not authorized by either L. 1987, ch. 182, or L. 1987, ch. 183. Thus, it is our opinion that L. 1987, ch. 183, § 4 does not allow Sunday carry out sales of cereal malt beverages.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Julene L. Miller
Deputy Attorney General

RTS:JLM:bas