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December 16, 1987

ATTORNEY GENERAL OPINION NO. 87-180

Charles A. Peckham
Rawlins County Attorney
Rawlins County Courthouse
Atwood, Kansas 67730

Re: Intoxicating Liquors and Beverages--Cereal Malt Beverages--Retailers' Licenses; Qualifications

Synopsis: Violations of the cereal malt beverage act are violations of the intoxicating liquor laws for purposes of issuing a license for retail sale of cereal malt beverages. Cited herein; K.S.A. 41-102, as amended by L. 1987, ch. 182, §2; 41-311, as amended by L. 1987, ch. 182, §22; 41-330; 41-2703, as amended by L. 1987, ch. 182, §99; 41-2708, as amended by L. 1987, ch. 182, §104.

* * *

Dear Mr. Peckham:

As Rawlins County Attorney you request our interpretation of the term "intoxicating liquor law," as used in subsection (b)(5) of K.S.A. 41-2703. Specifically, you inquire whether violation of a cereal malt beverage act provision would constitute violation of an intoxicating liquor law for purposes of determining qualifications for issuing a license for the retail sale of cereal malt beverages.

K.S.A. 41-2703(b)(5), as amended by L. 1987, ch. 187, §99, reads as follows:

"No retailer's license shall be issued to:

. . . .

"(5) A person who, within two years immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States."

In 1966 the Kansas Supreme Court opined that driving a motor vehicle while under the influence of intoxicating liquor is a violation of an intoxicating liquor law, as that term was at that time used in K.S.A. 41-311. The Court states:

"The appellant suggests that since both the Kansas and Texas provisions prohibiting driving an automobile while under the influence of intoxicating liquors are to be fund under classifications dealing with regulation of traffic on highways that their violation is not a violation of an intoxicating liquor law, as that term is used in 41-311, supra, but is rather the violation of a traffic regulation.

"We cannot agree with appellant for to do so would do violence to the clear intent and purpose of the legislature when it enacted 41-311, supra, prohibiting the granting of a license to any person or the spouse of any person who had been convicted or plead guilty to a violation of any intoxicating liquor law. It matters not where the law is classified in the statutes if it deals with intoxicating liquors.

"The legislature could, reasonably, have had but one thing in mind, it did not want to anyone who was prone to abuse the use of intoxicating liquors to have anything to do with a retail liquor store." Keck v. Cheney, 196 Kan. 535, 537 (1966).

In Attorney General Opinion No. 82-269 this office applied the conclusion reached in Keck v. Cheney to the provision of the cereal malt beverage act which requires revocation or suspension of a license for the employment of persons who have been adjudged guilty of any violation of the intoxicating liquor law. K.S.A. 41-2708(a)(10), as amended by L. 1987, ch. 182, §104. See also Attorney General Opinion No. 84-120.

Subsequent to the time the decision in Keck v. Cheney was rendered, the legislature removed the language involving violation of intoxicating liquor laws from K.S.A. 41-311. Similar language is now contained in K.S.A. 41-330 which provides:

> "After notice and an opportunity for hearing, the director may refuse to issue or renew or may revoke any license provided for by the Kansas liquor control act if:
>
> "(a) The licensee or the licensee's spouse has been convicted of a violation of intoxicating liquor laws of any state or the alcoholic beverage control laws of the United States or has forfeited of bond to appear in court to answer charges for any such violation, within the 10 years immediately preceding the date of application for issuance or renewal of the license or the date of revocation; or
>
> "(b) the licensee or the licensee's spouse has been convicted of a violation of any of the laws of any state relating to cereal malt beverages, within 10 years immediately preceding the date of application for issuance or renewal of the license or the date of revocation." (Emphasis added.)

Though the legislature has seemingly drawn a distinction between intoxicating liquor laws and cereal malt beverage laws in this and other provisions (see e.g. K.S.A. 41-311(a)(3), as amended by L. 1987, ch. 182, §22; 41-2708(2) and (10), as amended by L. 1987, ch. 182, §104), we believe that the legislature intentionally used this broadened term to include violations of any law involving intoxicating beverages. Though cereal malt beverages are specifically

excluded from the statutory definition of alcoholic liquor, K.S.A. 41-102(b), as amended by L. 1987, ch. 182, §2, they are still intoxicating beverages and the provisions regulating them are found in the intoxicating liquors and beverages chapter of the Kansas statutes.

Further, to conclude otherwise would lead to a ridiculous result. K.S.A. 41-2708(a)(2), as amended by L. 1987, ch. 182, §104, provides that a license to sell cereal malt beverages at retail shall be revoked or suspended for any violation of the cereal malt beverage act or any rules and regulations made by the board of county commissioners or the governing body of the city, as the case may be. If violations of the cereal malt beverage act were not considered violations of intoxicating liquor laws for purposes of issuing a license, then an individual who has a license revoked may turn right around and apply for a new license and county or city officials may not have statutory authority to deny such application. See Attorney General Opinions No. 83-70, 84-21, 84-63 and letter opinions dated April 27, 1960, February 4, 1966, April 28, 1970, February 9, 1971, April 22, 1971, June 23, 1971, July 25, 1972. Since statutes should be read so as to avoid such ridiculous results, Keck v. Cheney, 196 Kan. 535 (1966), Matter of Gantz, 10 Kan. App.2d (1985), it is our opinion that the term "intoxicating liquor laws" as used in K.S.A. 41-2703 as amended would include cereal malt beverage statutes.

Very truly yours,

Robert T. Stephan

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