



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

April 19, 1988

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88- 56

The Honorable Joseph C. Harder  
State Senator, Twenty-Fifth District  
Box 317  
Moundridge, Kansas 67107

Re: Intoxicating Liquors and Beverages--Certain  
Prohibited Acts and Penalties--Sale at Retail;  
Forbidden on Certain Days

Synopsis: 1988 Senate Bill No. 598 contains no new provision  
which would allow cities or counties, by home rule,  
to permit Sunday sales of spirits for off-premise  
consumption. Cited herein: K.S.A. 1987 Supp.  
19-101a; K.S.A. 41-712; Kan. Const., Art. 12,  
§5; 1988 Senate Bill No. 598.

\* \* \*

Dear Senator Harder:

You request our opinion regarding the effect 1988 Senate Bill  
No. 598 may have on the retail sale for consumption off the  
licensed premises of spirits and cereal malt beverages on  
Sunday. You pose two questions which we will address  
separately.

You first inquire whether subsection 1(d) of 1988 Senate Bill  
No. 598 can be interpreted to allow Sunday sales of spirits or  
cereal malt beverages for off-premise consumption. That  
subsection provides:

"A farm winery may sell domestic wine in  
the original unopened container to

consumers for consumption off the licensed premises at any time when a retailer is authorized to sell alcoholic liquor at retail between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of domestic wine and wine imported under subsection (e) and serve and sell domestic wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor."

The first sentence of this subsection specifically allows licensed farm wineries to sell domestic wine for off-premise consumption on Sundays. It does not speak to the sale of spirits or cereal malt beverages for off-premise consumption, nor to the ability of retailers to make such sales on Sunday. The second sentence of this subsection addresses only on-premise sales. Thus, in our opinion subsection 1(d) of 1988 Senate Bill No. 598 cannot be construed as allowing Sunday sales of spirits or cereal malt beverages for off-premise consumption.

You next ask whether any other provision of 1988 Senate Bill No. 598 would allow cities or counties to permit Sunday sales of spirits for off-premise consumption pursuant to their home rule powers. Article 12, §5 of the Kansas Constitution empowers cities "to determine their local affairs and government," subject to specified restrictions. One such restriction relevant for purposes of this opinion provides that a city's home rule powers are subject to "enactments of the legislature applicable uniformly to all cities." K.S.A. 1987 Supp. 19-101a(a)(1) provides a similar limitation on county home rule powers. The question thus becomes whether any part of Senate Bill No. 598 is nonuniform and if so does this nonuniformity allow cities or counties to permit Sunday sales of spirits for off-premise consumption.

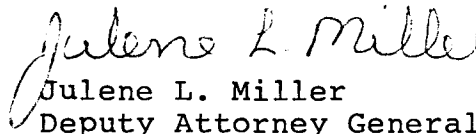
As states previously, the legislative enactment with which we are concerned, 1988 Senate Bill No. 598, does not address Sunday sales of spirits for off-premise consumption. Such sales are prohibited by K.S.A. 41-712(2). Since K.S.A. 41-712(2) is not amended by 1988 Senate Bill No. 598, and therefore is not part of the "enactment" for purposes of Article 12, §5 of the Kansas Constitution [see City of

Junction City v. Griffin, 227 Kan. 332, 335, 336 (1980);  
Note, Fifteen Years of Home Rule in Kansas Municipalities,  
16 W.L.J. 360, 372 (1977)], the uniformity or nonuniformity of  
the bill's amendments has no relevance to the question of  
whether a city or county may "charter out" from K.S.A. 41-712  
to allow Sunday sales of spirits for off-premise consumption.  
It is therefore our opinion, without reaching the question of  
whether the bill is non-uniform, that 1988 Senate Bill No. 598  
contains no new provision which would allow cities or counties  
to permit Sunday sales of spirits for off-premise consumption.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm