



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 71

Douglas F. Martin
Shawnee County Counselor
Shawnee County Courthouse
Room 203, 200 E. 7th
Topeka, Kansas 66603-3922

Re: Intoxicating Liquors and Beverages--Cereal Malt
Beverages--Hours and Days of Sales

Synopsis: An applicant for a license to sell cereal malt
beverages for on-premise consumption need not
demonstrate compliance with the 30% food sales
requirement for Sunday sales in order to qualify
for licensure. Compliance with the food sales
requirement is not a prerequisite to licensure.
Cited herein: K.S.A. 1987 Supp. 41-2703; 41-2704;
41-2708; K.S.A. 41-2711.

* * *

Dear Mr. Martin:

As Shawnee County Counselor, you request our opinion
regarding the 30% food sales requirement for Sunday sales of
cereal malt beverages. Specifically you question whether a
business may obtain a retailer's license and immediately sell
cereal malt beverages on Sunday without first convincing the
licensing authority that 30% of its gross receipts are derived
from sales of food for consumption on the licensed premises.
In other words, you question whether the 30% food sales
requirement is a prerequisite to licensure.

The provision of the cereal malt beverage act with which we are concerned provides in part:

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

. . . .

"(2) on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city. . . ." K.S.A. 1987 Supp. 41-4704. (Emphasis added.)

The statute of which this provision is a part establishes limits on the hours and days of sale of cereal malt beverages. The limitations of this statute are not prerequisites to licensure, but are restrictions on already licensed retailers.

K.S.A. 1987 Supp. 41-2703 sets forth the requirements and qualifications for a retailer's license to sell cereal malt beverages. Most of these qualifications must be verified in the application for licensure pursuant to K.S.A. 1987 Supp. 41-2702(c). The 30% food sales requirement of K.S.A. 1987 Supp. 41-2704(b) (2) need not be attested to in the application form. Further, you inform us that the Shawnee county resolution authorizing Sunday sales does not require a special license for such sales. Thus, it is our opinion that the Shawnee County Board of County Commissioners may lawfully issue a license for the retail sale of cereal malt beverages for on-premise consumption without requiring the applicant to establish that 30% of its gross receipts are derived from the sale of food for consumption on the licensed premises.

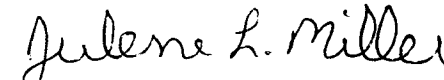
Further, the cereal malt beverage act does not require the licensing authority to approve or disapprove a licensee for Sunday sales of cereal malt beverages when issuing the

license. K.S.A. 1987 Supp. 41-2704(b)(2) merely states that a licensee may sell cereal malt beverages on Sunday, for consumption on the licensed premises, if it derives at least 30% of its gross receipts from the sale of food for consumption on the licensed premises. If a licensee sells cereal malt beverages on Sunday and fails to meet this requirement, the license is subject to revocation, K.S.A. 1987 Supp. 41-2708(a)(2), and the licensee may be subject to criminal prosecution as well, K.S.A. 1987 Supp. 41-2711. Finally, a licensee who is convicted of a violation of the cereal malt beverage act is ineligible for a retailer's license for two years after such conviction. K.S.A. 1987 Supp. 41-2703(b)(5); Attorney General Opinion No. 87-180. Thus, while there are no statutory requirements to verify 30% food sales prior to issuing a license, the licensee must be able to demonstrate compliance with the 30% food sales requirement after the fact in order to avoid action on the license and possible criminal penalties. For this reason, it may be prudent for the licensee to determine before selling cereal malt beverages on Sunday that 30% of their gross receipts are derived from the sale of food for consumption on the licensed premises.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm