



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88-137

The Honorable Arthur W. Douville
State Representative, Twentieth District
9600 Woodson
Overland Park, Kansas 66207-2844

Re: Intoxicating Liquors and Beverages--Certain
Prohibited Acts and Penalties--Sale on Credit
Prohibited

Synopsis: K.S.A. 1987 Supp. 41-717 prohibits the retail sale of alcoholic liquor on credit. A system which involves the purchaser's use of a credit card, thus allowing the purchaser to defer payment to a later date, is a sale on credit even though the retailer receives payment immediately through a third party. Cited herein: K.S.A. 1987 Supp. 16a-1-301; 41-717; K.A.R. 14-13-13 (March, 1988).

* * *

Dear Representative Douville:

You have requested my interpretation of K.S.A. 1987 Supp. 41-717. Specifically you would like my opinion regarding the applicability of this statute to Retriever Payment Systems.

Retriever Payment Systems is a point of sale electronic draft capture system which operates as follows:

1. Holders of Visa, Mastercard & American Express credit card privileges would present their cards for payment of merchandise at a Kansas retail liquor store.

2. The card is drawn through a special machine, and is then connected over regular telephone lines to the processing computer to verify the validity of the card.
3. The amount of the purchase is entered into the machine and, if the card is valid, the transaction is immediately completed:
 - a. The card is charged with the sale.
 - b. The amount of the sale is immediately deposited in the retailer's account with the participant's bank.
 - c. A receipt is automatically printed (one copy for the customer and one for the retailer which will be signed by the customer).
4. The transaction is then guaranteed by Retriever Payment Systems and the bank to the retailer.
5. The retailer is issued checks to redeposit those funds into his local retail liquor store account. (Or the money can be automatically wire transferred to this local account.)

K.S.A. 1987 Supp. 41-717 provides in part:

"(a) No person shall sell or furnish at retail and no microbrewery or farm winery shall sell to any consumer any alcoholic liquor on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise; or in payment for any services rendered. If any person extends credit in violation of this subsection, the debt attempted to be created shall not be recoverable at law."

Subsection (b) of this statute authorizes retailers to accept the personal check of the person making the purchase.

Pursuant to its rule-making authority, K.S.A. 1987 Supp. 41-210 and K.S.A. 41-211, the Division of Alcoholic Beverage Control has adopted the following regulation interpreting and implementing K.S.A. 1987 Supp. 41-717:

"(p) A retailer shall not purchase or sell any alcoholic liquor on credit. A

retailer shall not enter into any transaction or scheme the purpose of which is to buy or sell alcoholic liquor on credit. The following transactions shall be considered to be buying or selling alcoholic liquor on credit:

"(1) Taking or giving a post-dated check;

. . . .

"(3) taking a check with knowledge that there are insufficient funds to pay the check upon presentment;

. . . .

"(6) allowing any alcoholic liquor to be removed from the licensed premises without receiving payment for the same; and

"(7) accepting a credit card in payment of alcoholic liquor." K.A.R. 14-13-13, as amended March, 1988 (emphasis added).

In 1981 this office opined that K.S.A. 41-717 would not prohibit the sale of alcoholic liquor by a retailer in consideration of an electronic fund transfer, whereby the purchaser's account at a financial institution is debited in the amount of the purchase and the retailer's account at a financial institution is correspondingly credited by such amount prior to delivery of the alcoholic liquor. Attorney General Opinion No. 81-266. The system here in question differs from the electronic fund transfer described in Opinion No. 81-266 in that here the purchaser's bank account is not immediately debited, but rather the amount of the purchase is charged to the purchaser's credit card account and billed to the purchaser at a later date. Attorney General Opinion No. 81-266 specifically stated:

"[I]n a letter opinion dated October 11, 1965, Attorney General Ken Frizzell determined that 41-2706 is 'designed to prohibit sales on any basis other than cash or check,' i.e., it prohibits a 'non-cash transaction' V Op. Att'y Gen. 376, 377 (1970). This determination provided the basis for

Attorney General Frizzell's conclusion that 41-2706 prohibits the use of a chit book to purchase cereal malt beverages and that it also prohibits a retailer from selling cereal malt beverages in exchange for a check understood by both parties to be a no-funds check. Id. In both instances, the sales would constitute non-cash transactions involving the extension of credit.

"We concur in this interpretation of 41-2706, and in our judgment, it is equally applicable to 41-717, as well. Consistent with this interpretation, you were advised by this office in a letter of March 10, 1980, that the use of credit cards to purchase alcoholic liquor would not be permissible, since such credit card transactions would not constitute sales of liquor for 'cash for its equivalent.'"

Though it was recognized that an electronic fund transfer system may involve the extension of credit by the financial institution to the purchaser of the alcoholic liquor pursuant to a preexisting agreement between the consumer and the financial institution for a limited line of credit to cover situations where the consumer's account is overdrawn, this limited extension of credit was found to be incidental, unlike the regular extension of credit involved with the use of credit cards.

"Such an arrangement . . . is no more reflective of or akin to a credit transaction from the retailer's standpoint than is an agreement between a consumer and the consumer's bank authorizing the bank to cover insufficient fund checks or maintain a certain balance in a checking account. Moreover, an electronic fund transfer system is not equipped to allow the arrangement of consumer loans, either through the financial institution or any third party involved in the transaction. Thus, even though the purchase of alcoholic liquor or cereal malt beverages by means of an electronic fund transfer may involve a financial institution's

extension of credit to the purchaser, unlike the proposal to use credit cards for the purchase of such beverages, it does not necessitate the retailer's participation in such indebtedness."

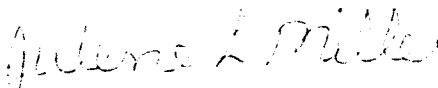
Accordingly, in Attorney General Opinion No. 84-68, we concluded that K.S.A. 41-717 prohibits any pattern of sale which necessarily involves the use of credit cards. The factual situation addressed in that opinion was similar to Retriever Payment Systems. The retail liquor store was to receive payment immediately, but the purchaser was to make use of a credit card and thus credit was extended, albeit by a third party.

K.S.A. 1987 Supp. 41-717 prohibits retail sale of alcoholic liquor on "credit" which is defined generally as "the ability to buy or borrow in consideration of a promise to pay within a period . . . following delivery," Kohler, A Dictionary for Accountants 147, (5th ed. 1975). This definition, as well as that found at K.S.A. 1987 Supp. 16a-1-301(14) of the Kansas Uniform Consumer Credit Code, does not specify that it must be the seller which extends the credit. Based on the plain language of K.S.A. 1987 Supp. 41-717, the administrative regulation properly adopted to implement that statute, and the above-cited opinions of this office, we must conclude that a system such as that in question which would allow the purchaser of alcoholic liquor to defer payment until a later date (even though the retailer is paid immediately) violates Kansas intoxicating liquor laws.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General