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ATTORNEY GENERAL OPINION NO. 89-89

The Honorable Ben Foster
State Representative, Eighty-Fifth District
400 N. Woodlawn, Suite 205
Wichita, Kansas 67208-4332

Re: Intoxicating Liquors and Beverages--Certain
Prohibited Acts and Penalties--Advertising and
Display of Liquor; Restrictions; Outdoor
Advertising After July 1, 1989

Synopsis: In that K.S.A. 1988 Supp. 41-714 is penal in
nature, its provisions must be strictly construed
in favor of the individuals and entities subject to
its restrictions. Thus, in our opinion subsection
(d) of this statute should be interpreted to
authorize outdoor advertising of the price and
brand name of alcoholic liquor beginning July 1,
1989. Cited herein: K.S.A. 1988 Supp. 41-714;
K.S.A. 41-902; K.A.R. 14-8-1; 14-8-2.

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Dear Representative Foster:

You request our opinion regarding the appropriate
interpretation to be given certain language appearing in
K.S.A. 1988 Supp. 41-714. Specifically, you inquire whether
subsection (d) of that statute authorizes outdoor advertising
of the price and brand name of alcoholic liquor beginning July
1, 1989.

K.S.A. 1988 Supp. 41-714 provides:

"(a) It shall be unlawful for:

"(1) Any person to advertise any alcoholic liquor by means of handbills;

"(2) any person to advertise any alcoholic liquor by means of billboards along public highways, roads and streets or for any owner or occupant of any property to permit any billboard advertising alcoholic liquor to remain on the property;

"(3) any retailer of alcoholic liquor to have any sign on the licensed premises in violation of subsection (b); or

"(4) any licensee to display alcoholic liquor in any window of the licensed premises.

"(b) No retailer shall have more than one sign on the licensed premises.

. . . .

"(c) The provisions of this section shall not be interpreted to prohibit the advertising of a microbrewery or farm winery, but before July 1, 1989, no advertising of a farm winery shall advertise the sale of wines by the winery or the prices of those wines and before July 1, 1989, no advertising of a microbrewery shall advertise the sale of beer by the brewery or the prices of that beer. Any advertising of a farm winery or microbrewery shall be subject to approval by the director prior to its dissemination.

"(d) On and after July 1, 1989, the provisions of this section shall not be interpreted to prohibit advertising of the price of any alcoholic liquor or advertising of any alcoholic liquor by brand name, and no rule and regulation

adopted hereunder shall prohibit such advertising.

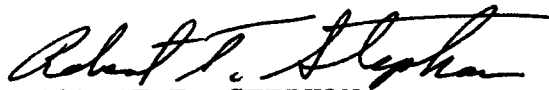
"(e) The secretary of revenue may adopt, in accordance with K.S.A. 41-210 and amendments thereto, rules and regulations necessary to regulate and control the advertising, in any form, and display of alcoholic liquor and nothing contained in this section shall be construed as limiting the secretary's power to adopt such rules and regulations not in conflict with this act."

Subsection (d) was added to the statute in the 1987 Session of the Legislature. L. 1987, ch. 182, §51. Representative Peterson moved to adopt the language in the House Committee on Federal and State Affairs. Minutes, March 10, 1987. No discussion was recorded relative to this amendment.

Clearly, prior to July 1, 1989, advertising of alcoholic liquor by means of handbills or billboards and having more than one sign on the licensed premises or displaying alcoholic liquors in any window of the licensed premises is prohibited. K.S.A. 1988 Supp. 41-714(a); Attorney General Opinion No. 61-28, III Opinions of the Attorney General 376 (1963). Further, the Division of Alcoholic Beverage Control (ABC) has adopted regulations prohibiting certain statements in advertisements appearing in mediums other than those listed in K.S.A. 1988 Supp. 41-714. K.A.R. 14-8-1; 14-8-2. It is argued that the intent of subsection (d) of K.S.A. 1988 Supp. 41-714 was to direct ABC to discontinue its prohibition against advertising of price and brand name through mediums other than those mentioned in K.S.A. 1988 Supp. 41-714. See Final Report and Recommendations of the Kansas Liquor Law Review Commission, issued December 1986 (used by House Federal and State Affairs Committee Subcommittee in making recommendations on 1987 Substitute for Senate Bill No. 141). However, as stated previously, there is no evidence of this intent in the committee minutes. Further, because K.S.A. 1988 Supp. 41-714 is a penal statute [see K.S.A. 41-920; V Opinions of the Attorney General 359 (1970)], we are constrained to interpreting the statute strictly and cannot look to extraneous indicators of legislative intent. State v. Thompson, 237 Kan. 562 (1985); State v. Magness, 240 Kan. 719 (1987).

A strict construction of K.S.A. 1988 Supp. 41-714 leads us to conclude that after July 1, 1989, advertising the price and brand name of alcoholic liquor through any medium may no longer be prosecuted. However, since legislative intent appears to be to allow advertising of price and brand name of alcoholic liquor only in mediums other than those listed in K.S.A. 1988 Supp. 41-714, the liquor industry may wish to consider honoring that apparent intent until such time as it can be clarified.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm