



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

June 30, 1976

ATTORNEY GENERAL OPINION NO. 76 - 196

Mr. E.V.D. Murphy, Director
Alcoholic Beverage Control Division
Kansas Department of Revenue
State Office Bldg. - Fifth Floor
Topeka, Kansas 66612

Re: Intoxicating Liquors and Beverages -- Bonded Warehouses
and Related Provision -- Eligibility for a Bonded Liquor
Warehouse.

Synopsis: The Director is without authority to approve as a bonded
warehouse of the State of Kansas, to which alcoholic liquor
can be consigned, a warehouse, which is located within the
state, maintained by a non-licensed supplier (importer),
whether a Kansas corporation or otherwise.

It is unlawful for a liquor supplier (importer), which possesses
a federal basic wholesaler's permit and a federal basic
importer's permit, to sell alcoholic liquor within this state,
to purchasers of any description, without having first obtained
a license under the provisions of the Liquor Control Act.

The holder of a liquor distributor's license is authorized to
directly import alcoholic liquor bottled in foreign countries
into Kansas for sale within this state, if conducted in con-
formity with the price affirmation and nondiscrimination
provisions of the Act, and for sale to authorized purchasers
without the state.

Mr. E.V.D. Murphy
Page Two
June 30, 1976

A licensed liquor distributor is liable for the gallonage tax on all alcoholic liquor directly imported into Kansas by the licensed distributor that is bottled outside the United States.

* * *

Dear Director Murphy:

This office is in receipt of your letter and enclosure in which you request an interpretation of specific provisions of the Kansas Liquor Control Act. You state that a Kansas corporation has made application with your office for a public bonded warehouse permit for a building in Johnson County. From this location the corporation intends to conduct business as an importer of wine produced and bottled in foreign countries. The corporation presently possesses a federal wholesaler's permit and federal importer's permit. You state that the corporation further desires to sell their merchandise to Kansas licensed distributors and distributors without the state.

You first ask whether a non-licensed supplier, in this case a Kansas corporation as mentioned before, may maintain a bonded warehouse in the state to which it will import wine and beer manufactured in foreign countries and then sell such merchandise to Kansas wholesalers and to wholesalers without the state. In answering, we must follow the dictate of the legislature in K.S.A. 41-104, and search the Act for definite authorizations for the proposed practices.

The legislature, with few exceptions, has placed a gallonage tax on all alcoholic liquor brought into Kansas. K.S.A. 41-501. To facilitate collection of this gallonage tax, the Act provides in K.S.A. 41-408 that all alcoholic liquor consigned to the State of Kansas must be brought in by bonded common carriers and the consignee must be some manufacturer or distributor maintaining a bonded warehouse for such liquor within the state. K.S.A. 41-401 provides that all licensed manufacturers and distributors must provide a warehouse for the storage of liquor, which when approved by the Director shall be a "bonded warehouse of the state of Kansas." (Emphasis added.) K.S.A. 41-404 states the amount of

Mr. E.V.D. Murphy
Page Three
June 30, 1976

annual bond to be paid by each licensed manufacturer and distributor. Nowhere in the Act is there a provision for the bonding of a warehouse of a non-licensed supplier (importer). While K.S.A. 41-724 does state that "no person or common carrier shall have or transport alcoholic liquor in or into this state, for sale, or for storage and sale in this state, upon which the required labeling or gauging fee, tax, duty, duty or license has not been paid, except for delivery to distributors, distillers, manufacturers, importers, blenders, rectifiers, wholesalers, or jobbers maintaining a bonded warehouse within this state", we do not view this provision as authorizing a bonded warehouse by a non-licensed supplier or importer; since, again, the Act only provides for maintenance of a bonded warehouse by a licensed manufacturer or distributor. Therefore it is the opinion of this office that a non-licensed supplier (importer), whether a Kansas corporation or otherwise, may not maintain a bonded warehouse within this state and may not be the consignee of any alcoholic liquor brought into the state.

It is also the position of this office that the Act precludes a non-licensed supplier (importer) from selling its merchandise within the state to purchasers of any description. K.S.A. 41-901 specifies that any person who "manufactures, imports for distribution as a distributor at whole-sale, or distributes or sells alcoholic liquor or beer... at any place within the state without having obtained a valid license so to do under the provisions of this act" shall suffer criminal liability. (Emphasis added.) Obviously, if the applying corporation does not have a license under the Act, it may not sell alcoholic liquor within this state. This is made even more apparent by K.S.A. 41-1004, which provides that the possession of a special tax stamp from the federal government authorizing the sale of alcoholic liquor by a person not licensed under the Liquor Control Act shall be prima facie evidence that the person so holding said special tax stamp is selling in violation of the Act. All federal wholesale and import permit holders are required to have special tax stamps.

While a negative response to your first inquiry relieves us of answering your remaining questions, we feel compelled to address the question whether the applicant's proposed operation as an importer of wine falls within the classification of licenses issued by the Alcoholic Beverage Control Division.

Mr. E.V.D. Murphy
Page Four
June 30, 1976

The Liquor Control Act provides that the Director may issue five classes of licenses. From the brief description of the proposed operation, it is unlikely that the applicant would desire a retail liquor license or non-beverage user's license. Further, since the wine to be sold is not produced and bottled in Kansas, the applicant's proposed business would not qualify for a manufacturer's license. K.S.A. 41-305. Whether the applicant's proposed import wine business could be carried out under an alcoholic liquor distributor's license would depend on whether that license allows the distributor to directly import alcoholic liquor bottled in foreign countries.

K.S.A. 41-306 provides, in part, that:

"An alcoholic liquor distributor's license (except beer) shall allow the wholesale purchase, importation and storage of alcoholic liquors and sale of alcoholic liquors (except beer) to licensees in this state and to such persons without the state as may be permitted by law..."
(Emphasis added.)

The Act defines in K.S.A. 41-102 (8), a "distributor" to mean the person "importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this act." (Emphasis added.) K.S.A. 41-602 requires that distributors at wholesale keep records of sales of liquor and wine imported. Also, K.S.A. 41-703 provides that no package containing alcoholic liquor "shall be delivered by any manufacturer or distributor or importing distributor" unless the same shall have certain labeling and seals. (Emphasis added.)

The question then becomes whether the term "importation" as used in K.S.A. 41-306 shall be construed to mean importing into the state from locations within the United States, or the act of bringing merchandise into Kansas from a foreign country.

While this office is aware that your agency has long viewed the term to mean the former interpretation, we are also aware that this question has never been formally posed to the Alcoholic Beverage Control Division and that no court cases have dealt with this issue.

Mr. E.V.D. Murphy

Page Five

June 30, 1976

It is a fundamental rule of statutory construction, that where a word is not defined by statute, that such word should be given its commonly understood meaning. Pfleiderer v. Brooks, 122 Kan. 647, Long v. Meade, 162 Kan. 129, State ex. rel. v. Kansas City, 181 Kan. 870. The word "import" or "importation" is not defined in the Liquor Control Act or in the rules and regulations adopted by the Board of Review. Black's Law Dictionary, Revised 4th Edition (1968), defines "importation" as:

"The act of bringing goods and merchandise into a country from a foreign country. Cunard Steamship Co. v. Mellon, 262 U.S. 100, 43 S. Ct. 504, 67 L Ed 894, 27 A.L.R. 1306."

Webster's Seventh New Collegiate Dictionary (1965) defines "import" to mean:

"To bring (goods) from a foreign or external source, especially to bring merchandise into a place or country from another country."

Thus it would appear in order that all of the language can be given any meaning, that a liquor distributor could import into this state alcoholic liquor bottled in a foreign country if that distributor complied with the requirement of Kansas law. To hold otherwise would have the effect of eliminating pertinent language and thereby would nullify any legislative intent.

This construction is made even more apparent by K.S.A. 41-1101 (1), which states that:

"It shall be unlawful for any distributor licensed under this act to purchase any alcoholic liquor from any manufacturer, or corporate subsidiary of any manufacturer who makes his products solely through a subsidiary or subsidiaries, rectifier, distiller or fermenter or from a distributor of alcoholic liquor bottled in a foreign country either within or without this state, unless such manufacturer, subsidiary or

Mr. E.V.D. Murphy
Page Six
June 30, 1976

such distributor shall file with the Director a written statement... in which he agrees that he will sell any of the brands or kinds of alcoholic liquor manufactured or distributed by him to any distributor licensed in this state and that such sales will be made to all such licensed distributors in this state at the same current price and without discrimination..."
(Emphasis added.)

Clearly by this statute the legislature acknowledged the purchase of alcoholic liquor bottled in foreign countries by a licensed distributor from another licensed distributor within Kansas if the vending distributor asserts it will not discriminate and that it will sell to all licensed distributors. Further, such licensed distributor would be a "manufacturer or others" authorized to sell alcoholic liquor to licensed distributors pursuant to K.S.A. 41-1111 and would thus be required to affirm its prices under K.S.A. 41-1112.

In many respects this opinion parallels our opinion to your office of January 16, 1973, in which we interpreted the Liquor Control Act to allow licensed beer distributors to directly import beer bottled in foreign countries into Kansas. In that opinion we also stated that under the provisions of the Liquor Control Act, specifically K.S.A. 41-307, Kansas beer distributors could export if its purchasers outside the state would be permitted to purchase from a Kansas wholesaler in accordance with the laws of their respective states and that Kansas could regulate such exportation to insure that diversion did not occur within this state.

Using the same language, K.S.A. 41-306 provides that liquor distributors may sell their merchandise "to such person without the state as may be permitted by law." Thus this statute appears to authorize a Kansas licensed distributor to sell and export alcoholic liquor to those persons doing business outside of state who are authorized by their respective states to purchase and receive alcoholic liquor from such a source as a Kansas wholesaler.

Mr. E.V.D. Murphy
Page Seven
June 30, 1976

In the 1973 opinion, it was also our position that a beer distributor was liable for gallonage tax on all beer imported into this state and not for just that portion imported which was later sold in Kansas. This opinion was based on the language contained in K.S.A. 41-501 which provides in sub-section (2) (b) that:

"Said tax shall be paid only once, and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases, or receives such alcoholic liquors..."

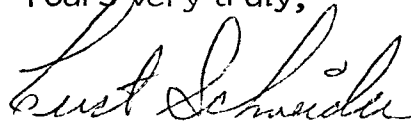
K.S.A. 41-501 (3) adds:

"Manufacturers, or distributors at wholesale of alcoholic liquors shall be exempt from the payment of such gallonage tax imposed on such liquors, upon satisfactory proof, including bills of lading furnished to the distributor by affidavit or otherwise as the director may require, that such liquors were manufactured in this state but were shipped out of the state for sale and consumption outside the State of Kansas."
(Emphasis added.)

Since the statute excepts from the payment of gallonage tax only alcoholic liquor manufactured in this state and exported beyond our borders, a licensed liquor distributor is liable for all gallonage tax on alcoholic liquor which is bottled in foreign countries and directly imported into Kansas by the distributor.

To summarize, it is our position that a Kansas corporation may obtain a license as a liquor distributor, if it otherwise qualifies, which authorizes that corporation to directly import wines bottled in foreign countries into Kansas for sale within this state and for sale to authorized purchasers in other states. Further, said licensed distributor would be liable for the tax on all wine so imported and must post and affirm its sales prices for this merchandise as required by K.S.A. 41-1101, K.S.A. 41-1112, and the rules and regulations promulgated thereunder.

Yours very truly,



CURT T. SCHNEIDER
Attorney General