



STATE OF KANSAS

## Office of the Attorney General

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

**Curt T. Schneider**  
Attorney General

March 18, 1977

ATTORNEY GENERAL OPINION NO. 77- 100

Mr. Wendell D. Winkler  
Winkler & Winkler  
Attorneys at Law  
East Side Square - PO Bx 244  
Paola, Kansas 66071

Re: Kansas Liquor Control Act -- Certain Prohibited Acts  
And Penalties -- Location Of Retail Premises.

Synopsis: The holder of a retail liquor license, who obtained the license for a particular premises prior to the establishment of a school, college or church within two-hundred (200) feet of the business, may remodel the building in which the business is located or destroy the old building and construct a new structure without losing its status as a premises eligible for retail licensing.

\* \* \*

Dear Mr. Winkler:

You inquire concerning K.S.A. 41-710 of the Kansas Liquor Control Act.

You specifically ask whether this statute would allow a retail liquor dealer, currently licensed, to construct a new store at its existing location, where subsequent to the issuance of the original license a

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church has located within 200 feet of the premises.

K.S.A. 41-710 provides in part that:

"No license shall be issued for the sale at retail of any alcoholic liquor on the premises which... are located within two-hundred (200) feet of any public or parochial school or college or church: Provided, That if any such school, college or church shall be established within two-hundred feet of any licensed retail premises after such premises have been licensed, then such premises shall be an eligible location for retail licensing..."  
(Emphasis added.)

Apparently the legislature felt that the good order of society would be enhanced by the removal of retail liquor sales a reasonable distance from school, churches and colleges. Unlike many other states, which by means of a "grandfather clause" exempted licensees already in business on a certain date from the prohibition, the Kansas legislature went further by providing that any premises once licensed prior to the establishment of a school, college or church "would be an eligible location for retail licensing."

The question here is whether the exemption applies only to the structure that housed the retail business as it existed at the time when the school, college or church was established, or extends to any replacement structure which might be built at the existing location?

The primary rule of statutory construction is to ascertain and give effect to the intent of legislature. Altes v. Johnson, 127 Kan 443 and Overland Park v. Nikias, 209 Kan 643.

We conclude that the legislature, by adding the proviso, intended that when a school, college and church voluntarily located within 200 feet of an existing retail liquor store, the business could continue to be licensed and that the school, college or church must forever tolerate the existence of a retail liquor business at that particular location. We are also of the opinion that this intent is not served by limiting the proviso only to structures as they existed when the school, college or church located in the vicinity. Therefore the exemption contained in

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the proviso must be interpreted to include any additions to an existing structure and to any new building which is constructed to replace the original liquor store which was voluntarily or involuntarily destroyed. Of course the remodeled store or the new building could not expand beyond the legal description contained in a store's application for license, as provided by law, at the time the school, college, or church was established.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

CTS:WMS:eb  
cc: David Heger  
County Attorney  
Bx 245, Paola, Ks. 66071