



STATE OF KANSAS

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January 21, 1980

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ATTORNEY GENERAL OPINION NO. 80-16

Mr. Michael J. Malone
District Attorney
Douglas County
Judicial and Law Enforcement Center
Lawrence, Kansas 66066

Re: Intoxicating Liquors and Beverages--Cereal
Malt Beverages--Standards of Conduct for
Licensed Premises

Synopsis: Pursuant to K.S.A. 41-2704, a restaurant that is not licensed as a private club, but which is licensed to sell cereal malt beverages, is prohibited from maintaining any private room in said place of business, and no person on the premises thereof may have any alcoholic liquor in his or her possession. Such statutory provisions, being specific in nature, take precedence over the general provisions of K.S.A. 41-2602(d), which authorize the consumption of alcoholic liquor in the private dining room of a restaurant under specified conditions.

* * *

Dear Mr. Malone:

You inquire whether restaurants whose primary business is food service, but which are licensed to sell cereal malt beverages, may rent private rooms to closed membership organizations or groups when it is contemplated that such groups or organizations will bring and consume alcoholic liquors therein. Further, it is understood that the restaurants involved are not licensed private clubs, but merely provide set-up service, food and the room.

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In resolving this question, it is necessary to delineate those activities a restaurant may undertake relative to the serving of cereal malt beverages, alcoholic liquors or both. First, a restaurant may be licensed as a private club. If it is, then its activities are governed by the Private Club Licensing Act (K.S.A. 41-2601 et seq.). Second, if a restaurant is not licensed as a private club, K.S.A. 41-2602, which is part of the Private Club Licensing Act, provides, in pertinent part, as follows:

"The consumption of alcoholic liquor by any person shall be authorized in this state:

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"(d) in a private dining room of a hotel, motel or restaurant when said dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 takes place at said private party."

The foregoing statutory provision authorizes the consumption of alcoholic liquor in the private dining rooms of hotels, motels and restaurants, requiring that there be no sale in violation of K.S.A. 1979 Supp. 41-803. In our judgment, a restaurant, as used in the context of these provisions, is a "food service establishment," which is defined in K.S.A. 1979 Supp. 36-501(e) as follows:

"'Food service establishment' means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order care, luncheonette, grill, tea room sandwich shop, soda fountain, tavern, private club, roadside stand, industrial-feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge."

Third, a restaurant might be licensed under the provisions of the Cereal Malt Beverage Act (K.S.A. 41-2701 et seq.). K.S.A. 41-2704 imposes requirements on premises licensed to sell cereal malt beverages, and it states, in pertinent part:

"No private rooms or closed booths shall be operated in said place of business, but this provision shall not apply if the licensed premises are also currently licensed as a club under a license issued by the state director of alcoholic beverage control. . . . No person shall have any alcoholic liquor in his possession while in said place of business, unless the premises are currently licensed as a club under a license issued by the state director of alcoholic beverage control." (Emphasis added.)

In our judgment, if a restaurant elects to hold a cereal malt beverage license, but is not licensed as a private club, then the provisions of the Cereal Malt Beverage Act (K.S.A. 41-2701 et seq.) must govern the conduct of those persons or corporations licensed thereunder, as that Act sets forth the conditions of said license. In the recent case, Chelsea Plaza Homes, Inc. v. Moore, 226 Kan. 431 (1979), the problem of conflicting statutes was discussed by the Kansas Supreme Court. Syllabus, paragraph 1 states:

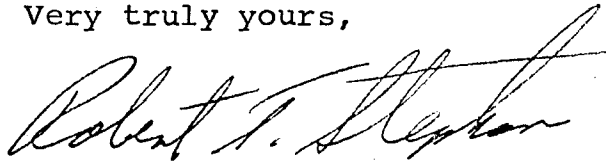
"It is a cardinal rule of law that statutes complete in themselves, relating to a specific thing, take precedence over general statutes or over other statutes which deal only incidentally with the same question, or which might be construed to relate to it. Where there is a conflict between a statute dealing generally with a subject, and another dealing specifically with a certain phase of it, the specific legislation controls in a proper case."

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Thus, as the condition precedent to the restaurant acquiring its cereal malt beverage license is that it shall not have any private rooms or closed booths upon the licensed premises, that provision must take precedence over the permissible activity provided for in the Private Club Licensing Act. The Private Club Licensing Act deals only incidentally with this subject, and as the Cereal Malt Beverage Act deals directly with the issue you raise, this is a proper case where the latter must govern.

Therefore, restaurants whose primary business is food service, but which are licensed to sell cereal malt beverages, may not rent private rooms to groups, membership organizations or clubs when it is contemplated that such groups or organizations will bring and consume alcoholic liquors thereon, inasmuch as no private rooms are authorized on the premises of a cereal malt beverage licensee.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Robert E. Duncan, II
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RTS:WRA:RED:gk