



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81- 31

The Honorable William Mulich
State Senator, Fifth District
State Capitol, Room 136-N
Topeka, Kansas 66612

Re: Intoxicating Liquors and Beverages--Cereal Malt
Beverages--Sale and Consumption on Public Property

Synopsis: There are no statutory prohibitions against the sale or consumption of cereal malt beverages on state property owned by the state or any governmental subdivision thereof. Thus, a city may issue a license for the retail sale of cereal malt beverages on city property. Cited herein: K.S.A. 1980 Supp. 41-102, 41-719, 41-2701.

* * *

Dear Senator Mulich:

In essence, you have asked whether a city may issue a license for the sale of cereal malt beverages at retail on public property.

A similar question was addressed by Attorney General Kent Frizzell in his letter opinion of September 4, 1969, to Senator Edward F. Reilly, Jr. In that opinion, Attorney General Frizzell stated:

"We know of no statutory prohibition against consumption or sale of cereal malt beverages (beer containing not more than 3.2% of alcohol by weight) upon property owned by the state or any governmental subdivision thereof.

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"Since there is no statutory prohibition, it is our opinion that the city [Leavenworth] may permit sales of cereal malt beverages on city property."

We concur in that opinion. The sale and consumption of cereal malt beverages are governed by the provisions of Article 27 of Chapter 41 of Kansas Statutes Annotated. We are aware of no provision in any of the statutes contained therein which prohibits the sale or consumption of cereal malt beverages on public property.

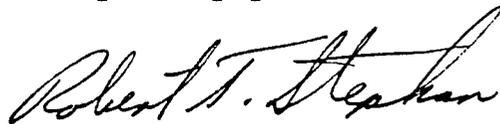
It is to be noted that K.S.A. 1980 Supp. 41-2701 defines "cereal malt beverage" to mean

"any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight."

"Also, in defining "alcoholic liquor" for purposes of the Liquor Control Act, the provisions of K.S.A. 1980 Supp. 41-102(2) exclude "any beer or cereal malt beverage containing not more than three and two-tenths percent (3.2%) alcohol by weight." Thus, it is clear that the consumption of cereal malt beverage is not proscribed by K.S.A. 1980 Supp. 41-719, which makes it "unlawful for any person to drink or consume alcoholic liquor . . . upon property owned by the state or any governmental subdivision thereof."

For the above-stated reasons, it is our opinion that there are no statutory prohibitions against the sale or consumption of cereal malt beverages on property owned by the state or any governmental subdivision thereof. Thus, a city may issue a license for the retail sale of cereal malt beverages on city property.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:phf