



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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December 7, 1981

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ROBERT T. STEPHAN
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION NO. 81-266

The Honorable Edward F. Reilly, Jr.
State Senator -- Third District
430 Delaware
Leavenworth, Kansas 66048

Re: Intoxicating Liquors and Beverages -- Kansas Liquor
Control Act; Cereal Malt Beverages -- Retail Sales
Involving Electronic Fund Transfers

Synopsis: Neither K.S.A. 41-717 nor K.S.A. 41-2706 prohibits
a retailer from selling or furnishing alcoholic
liquor or cereal malt beverages, respectively,
in consideration of an electronic fund transfer,
whereby the purchaser's account at a financial
institution is debited in the amount of the pur-
chase and the retailer's account at a financial
institution is correspondingly credited by such
amount prior to delivery of the alcoholic liquor
or cereal malt beverages. Such electronic fund
transfer is the equivalent of a cash transaction
and does not involve the retailer's extension of
credit to the purchaser. Cited herein: K.S.A.
1980 Supp. 16a-1-301 (as amended by L. 1981, ch. 93,
§5), K.S.A. 41-717, 41-2706, 15 U.S.C.A. §§1693,
1693a, 12 C.F.R. §205.5.

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Dear Senator Reilly:

You have requested our opinion as to whether either alcoholic
liquor or cereal malt beverages may be purchased at retail by
means of an electronic fund transfer, i.e., "an automated,
immediate transfer of funds from one account to another based
on pre-arranged agreement between the buyer and his bank."

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Your question arises because of provisions in the Kansas Liquor Control Act and in the sequence of statutes pertaining to cereal malt beverages. Specifically, K.S.A. 41-717 provides as follows:

"No person shall sell or furnish alcoholic liquor at retail to any person on credit or on a passbook, or order on a store, or in exchange for any goods, wares or merchandise, or in payment for any services rendered; and if any person shall extend credit for such purpose, the debt thereby attempted to be created shall not be recoverable at law. No retailer of alcoholic liquor shall accept a check for payment of alcoholic liquors sold by him other than the personal check of the person making such purchase."

And in substantially the same language, K.S.A. 41-2706 provides:

"No person shall sell or furnish cereal malt beverages at retail to any person on credit or on a passbook, or order on a store, or in exchange for any goods, wares or merchandise, or in payment for any services rendered; and if any person shall extend credit for such purpose, the debt thereby attempted to be created shall not be recoverable at law, and, in addition, suffer the penalties provided in section 2 hereof."

The only reported Kansas case construing either of the foregoing statutes is State, ex rel., v. Hines, 178 Kan. 142 (1955), where the Kansas Supreme Court stated that 41-717 "specifically prohibits the retail sale of liquor on credit." Id. at 145. We also note that, in a letter opinion dated October 11, 1965, Attorney General Kent Frizzell determined that 41-2706 is "designed to prohibit sales on any basis other than cash or check," i.e., it prohibits a "non-cash transaction." V Op. Att'y Gen. 376, 377 (1970). This determination provided the basis for Attorney General Frizzell's conclusion that 41-2706 prohibits the use of a chit book to purchase cereal malt beverages and that it also prohibits a retailer from selling cereal malt beverages in exchange for a check understood by both parties to be a no-funds check. Id. In both instances, the sales would constitute non-cash transactions involving the extension of credit.

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We concur in this interpretation of 41-2706, and in our judgment, it is equally applicable to 41-717, as well. Consistent with this interpretation, you were advised by this office in a letter of March 10, 1980, that the use of credit cards to purchase alcoholic liquor would not be permissible, since such credit card transactions would not constitute sales of liquor for "cash or its equivalent."

Clearly, both of the statutes in question prohibit a retailer from extending credit. Thus, the issue presented by your request is whether the use of electronic fund transfers in consideration for the furnishing of alcoholic liquors or cereal malt beverages by a retailer constitutes the extension of credit by the retailer. To resolve this issue requires an examination of the nature of an electronic fund transfer.

Initially, we note that Congress, in Title IX of the Consumer Credit Protection Act (15 U.S.C.A. §§1693 et seq.), popularly known as the Electronic Fund Transfer Act, authorized the use of electronic fund transfer systems by financial institutions, based upon an expressed finding that the use of such systems "provides the potential for substantial benefits to consumers." 15 U.S.C.A. §1693. In 15 U.S.C.A. §1693a(b), an "electronic fund transfer" is defined as

"any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone."

Previously, this office has had occasion to consider the nature of electronic fund transfers. In Attorney General Opinion No. 74-196, it was concluded that the establishment and use of an electronic fund transfer system by a Kansas bank did not constitute branch banking. In reaching this conclusion, Attorney General Vern Miller described an electronic fund transfer system, as follows:

"Under such a system, a bank, or group of banks acting jointly, may install electronic computer terminals at various locations, placed generally as [sic] so-called 'point of sale' terminals in retail sales or service establishments. The terminal may be a completely automated installation, or one designed for use by the personnel of the establish-

ment in which it is located. These terminals would be 'on line' to the computer of the bank or participating banks. The bank or participating banks would furnish each of their depositors with a coded card designed to identify the depositor and account when inserted in the terminal. By inserting the card and the terms of the transaction into the terminal which transmits the information identifying the depositor, the account, and the transaction to the computer on the premises of the bank, a depositor would thus be able to deposit or withdraw cash from his checking or savings account, or transfer funds from his own account to that of another depositor of the bank or of one of the participating banks, including the account of the retail establishment in which the terminal is located. A depositor who by prearrangement has established a line of credit with his bank may by use of his card at the terminal activate this line of credit, usually by overdrafting his deposit checking account. All transactions would be consummated instantly in the computer on the premises of the bank, which would either accept the transaction or reject it if the depositor did not have either a sufficient balance or an established line of credit." VIII Op. Att'y. Gen. 65 (1974).

From the information submitted with your request, it is our understanding that the definition of electronic fund transfer in 15 U.S.C.A. §1693a and the foregoing description of an electronic fund transfer system in Opinion No. 74-196 are consistent with your concept of electronic fund transfers. Thus, predicated on this understanding, it is necessary to consider whether an electronic fund transfer involves the extension of credit by the retailer of alcoholic liquor or cereal malt beverages. For that purpose, it is appropriate to note that credit may be defined as "[t]he ability to buy or borrow in consideration of a promise to pay within a period, sometimes loosely specified, following delivery." Kohler, A Dictionary For Accountants, Fifth Edition (1975) at 147. Similarly, in the Kansas Uniform Consumer Credit Code, "credit" is defined as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." K.S.A. 1980 Supp. 16a-1-301(15) (as amended by L. 1981, ch. 93, §5).

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As we understand it, an electronic fund transfer system is a computerized system for transferring a consumer's funds from one account to another, be it to another account in his or her own name or one in the name of some third party. The consumer transfers only his or her own existing funds. Clearly, a consumer's use of an electronic fund transfer to purchase alcoholic liquor or cereal malt beverages does not defer payment of a debt from the consumer to the retailer. No such debt is created; there is not established the debtor-creditor relationship between the retailer and consumer. Accordingly, such transaction does not involve the extension of credit by the retailer. In short, an electronic fund transfer is a transaction of an immediate nature, and the use thereof to purchase alcoholic liquor or cereal malt beverages is the equivalent of a cash transaction.

Admittedly, such transaction may involve the extension of credit by a financial institution to the consumer. Pursuant to 12 C.F.R. §205.5(c)(1)(iii), such extension of credit is permitted in certain instances where there is a pre-existing agreement between the consumer and the financial institution. These agreements are very limited, however, in that they allow for credit to be extended by the financial institution only in instances where the consumer's account is overdrawn and the institution has agreed to cover the transaction, or in instances where the financial institution and consumer have agreed to maintain a specified minimum balance in the account. Such an arrangement, though, is no more reflective of or akin to a credit transaction from the retailer's standpoint than is an agreement between a consumer and the consumer's bank authorizing the bank to cover insufficient fund checks or maintain a certain balance in a checking account. Moreover, an electronic fund transfer system is not equipped to allow the arrangement of consumer loans, either through the financial institution or any third party involved in the transaction. Thus, even though the purchase of alcoholic liquor or cereal malt beverages by means of an electronic fund transfer may involve a financial institution's extension of credit to the purchaser, unlike the proposal to use credit cards for the purchase of such beverages, it does not necessitate the retailer's participation in such indebtedness.

Therefore, it is our opinion that neither K.S.A. 41-717 nor K.S.A. 41-2706 prohibits a retailer from selling or furnishing alcoholic liquor or cereal malt beverages, respectively, in consideration of an electronic fund transfer, whereby the purchaser's account at a financial institution is debited in the amount of the purchase and the retailer's account at a financial institution is correspondingly credited by such

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amount prior to delivery of the alcoholic liquor or cereal malt beverages. Such electronic fund transfer is the equivalent of a cash transaction and does not involve the retailer's extension of credit to the purchaser.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:jm