



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 70

David J. Wood
Dresie, Jorgensen and Wood, P.A.
433 North Broadway
P. O. Box 2427
Wichita, Kansas 67201

Re: Intoxicating Liquors and Beverages -- Cereal Malt
Beverages -- City Authority to Refuse License

Synopsis: The qualifications for a cereal malt beverage re-
tailer license are specified by statute and any
applicant for such license issued by a city govern-
ing body who meets those qualifications must be
granted a license. Cited herein: K.S.A. 41-2701,
41-2702, 41-2703.

* * *

Dear Mr. Wood:

You inquire regarding K.S.A. 41-2702(f) and whether a govern-
ing body of a city may, pursuant to this provision, refuse to
issue a cereal malt beverage license for on-premises consump-
tion to an otherwise qualified applicant. Subsection (f) of
K.S.A. 41-2702 provides:

"The board of county commissioners of the
several counties or the governing body of a
city shall issue a license upon application
duly made as otherwise provided for herein,
to any retailer engaged in business in said
county or city and qualified to receive said
license, to sell only cereal malt beverages
in original and unopened containers and not
for consumption on the premises. The annual
license fee for such license shall be not
less than twenty-five dollars (\$25) or more
than fifty dollars (\$50). (Emphasis added.)

K.S.A. 41-2702 requires all retailers of cereal malt beverage to be licensed, sets out the basic procedures to be followed in applying for a license, and specifies the fees for cereal malt beverage retailer's licenses. Subsection (f) of K.S.A. 41-2702 applies only to retail sales of cereal malt beverages "in original and unopened containers, and not for consumption on the premises" and limits the annual license fee for such sales to a maximum of \$50.00. The purpose of this subsection is to designate a specific license fee for such sales as opposed to K.S.A. 41-2702(d) subparts (1) and (2) which allow for higher license fees for more general cereal malt beverage retailer licenses.

The question that you have raised regarding approval of on-premise retailer's licenses by a city is answered directly by K.S.A. 41-2703, which provides:

"(a) After examination of an application for a retailer's license, the board of county commissioners or the director shall, if they approve the same, issue a license to the applicant. The governing body of the city shall, if the applicant is qualified as provided by law, issue a license to said applicant." (Emphasis added.)

K.S.A. 41-2703 subpart (b) delineates the qualifications that every applicant for a cereal malt beverage retailer's license must meet. Any applicant who meets those qualifications is presumably "qualified as provided by law" and, according to the second sentence of K.S.A. 41-2703(a), the governing body of the city shall issue a license to the applicant. The language is mandatory, not discretionary, in nature.

The Kansas Supreme Court in Curless v. Board of County Commissioners, 197 Kan. 580, 585 (1966), noted the importance of this distinction as follows:

"Referring to K.S.A. 41-2703 we note that general statements on issuance of a license by the board of county commissioners remain the same, but the provision for issuance by the governing body of a city was placed in a separate sentence and changed to the more imperative statement 'shall, if the applicant is qualified as provided by law, issue a license' by removing the words 'if they approve the same.'"

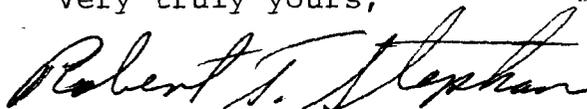
K.S.A. 41-2703 applies to retail sales for consumption on the premises. For purposes of cereal malt beverage licenses,

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K.S.A. 41-2701(d) defines a "retailer" as any person who sells cereal malt beverage "for use or consumption and not for re-sale in any form." The Attorney General's office interpreted an earlier form of this definition to include sales for consumption on the premises as well as sales of original and unopened containers for off-premises consumption (Opinions of the Attorney General, Vol. VII, p. 665). The basic definition is the same as it was when that opinion was issued and we concur in the previous opinion. Hence, we think K.S.A. 41-2703, which refers in general to retailer's licenses, is applicable to retail sales for on-premises consumption of cereal malt beverages.

Therefore, in our judgment, the qualifications for a cereal malt beverage retailer's license are specified by statute and any applicant for a license issued by a city governing body who meets those qualifications must be granted a license. Conclusions reached herein are consistent with prior opinions of this office. See e.g., Opinions of the Attorney General, VI, p. 88 (1973); Vol. VII, pp. 658, 659, 660, 667, 668 (1974); and Vol. VIII, p. 688 (1974).

Very truly yours,



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RTS:BJS:RH:hle