



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 85

Honorable August Bogina, Jr., P.E.
Senator, Tenth District
13513 West Ninetieth Place
Lenexa, Kansas 66215

Re: Intoxicating Liquors and Beverages--Licensing and
Regulation of Clubs--Club Licenses; Premises Licensed;
Zoning Compliance

Synopsis: The construction of a church within 200 feet of a
class A private club has no effect upon the issuance
of an annual license to the club. Cited herein:
K.S.A. 41-101, 41-102, 41-710, 41-2601, 41-2608,
Substitute for 1983 House Bill No. 2551.

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Dear Senator Bogina:

On behalf of a constituent, you request our interpretation of
the Kansas Liquor Control Act, K.S.A. 41-101 et seq., and the
Private Club Law, K.S.A. 41-2601 et seq. Specifically, you
ask whether construction of a church within 200 feet of the
property line of premises licensed as a class A private club
would preclude the issuance of an annual license to the private
club.

The Kansas Liquor Control Act prescribes that "no retailers'
license . . . shall be issued for premises which . . . are
located within 200 feet of any . . . church." K.S.A. 41-710
(as amended by Section 16 Substitute for 1983 House Bill No.
2551). However, if the church is established after the premises

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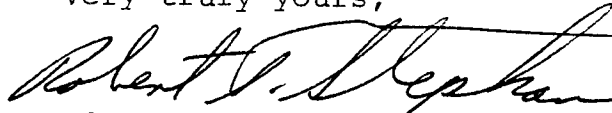
are licensed, the premises remain eligible for a retail license. Id. Furthermore, the restriction upon licensure of retail premises located within 200 feet of a church does not apply to licensure of private clubs since, by definition, the phrase "sale at retail" does not refer to sales by a licensed private club. K.S.A. 41-102(18) (as amended by Section 1 of Substitute for 1983 House Bill No. 2551).

The only statutory restriction upon the location of private clubs is set forth in K.S.A. 41-2608, which provides as follows:

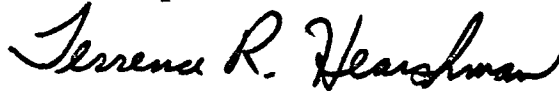
"The license provided herein shall be issued for one particular premises which shall be stated in the application and in the license. No license shall be issued for a premises which is being or will be used as a clubhouse or clubroom unless the city, township or county zoning code allows a clubhouse or clubroom at that location." (Emphasis added.)

Pursuant to the above-quoted statute, if the city zoning code allows a "clubhouse" or "clubroom" to be operated at the subject location, the Director of Alcoholic Beverage Control may not deny an annual license to the subject private club for any reason related solely to the location of the club. The fact that a church is constructed within 200 feet of a class A private club has no effect upon the issuance of an annual license to the club.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:ta