



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 156

Thomas J. Kennedy, Director  
Division of Alcoholic Beverage Control  
Department of Revenue  
State Office Building, Room 521S  
Topeka, Kansas 66625

Re: Intoxicating Liquors and Beverages -- Certain  
Prohibited Acts and Penalties -- Transactions  
Between Distributors and Retailers

Synopsis: The prohibitions and limitations prescribed  
in K.S.A. 41-702, 41-703, and K.A.R. 1982  
Supp. 14-10-1 permit the sale of items, other  
than furnishings, fixtures and equipment, by dis-  
tributors to retailers, only in those instances  
where the particular item conveyed has no value  
in excess of the amount of consideration paid.  
Cited herein: K.S.A. 41-321, 41-323, 41-702,  
41-703, K.A.R. 1982 Supp. 14-10-1.

\* \* \*

Dear Mr. Kennedy:

You explain that confusion exists in regard to the items that may be transferred by licensed liquor distributors to licensed retailers under the provisions of K.A.R. 1982 Supp. 14-10-1, in light of K.S.A. 41-702 and 41-703. You indicate that under the supposed authority of this rule and regulation, licensed distributors are providing retailers, for amounts of one dollar or less, such items as chairs, benches, clocks, mirrors and lamps. Also, for these nominal amounts, such things as binoculars, cameras and beverage mugs are being provided.

Each of these items bears advertising matter concerning a manufacturer or brand of alcoholic liquor or is temporarily affixed to a poster or placard which bears such advertising. The distributors are provided these items at no cost or at very nominal cost by the manufacturer of the alcoholic liquor being advertised. The distributors then provide these items to retailers for the distributor's cost, or if there is no cost, then for "some consideration," which, in practice, does not exceed one dollar.

You suggest that chairs and benches are furnishings and that clocks, mirrors and lamps are interior decorations, having a value in excess of the amounts being paid for them. Moreover, you express the opinion that binoculars, cameras and beverage mugs are things of value which are being provided to retailers by distributors for amounts far below their actual value. You question the propriety of such transactions, due to the provisions of K.S.A. 41-702 and 41-703. K.S.A. 41-702, in relevant part, provides:

"It shall be unlawful for any person having a retailer's license . . . to accept, receive, or borrow money, or anything else of value, or to accept or receive credit, directly or indirectly, from any person . . . engaged in the manufacturing, distributing or wholesaling of . . . liquor. . . . It shall be unlawful for any manufacturer, distributor or wholesaler to give or lend money or anything of value or otherwise loan or extend credit, directly or indirectly, to any such licensee . . . ."  
(Emphasis added.)

K.S.A. 41-703, provides in part:

No manufacturer, distributor or wholesaler shall directly or indirectly:  
(1) Sell, supply, furnish, give or pay for, or loan or lease, any furnishing, fixture or equipment on the premises of a place of business of another licensee authorized under this act to sell alcoholic liquor at retail . . . .

"No manufacturer, distributor or wholesaler shall, directly or indirectly . . . furnish, give, lend or rent any interior

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decorations or any signs, for inside or outside use, for use in or about or in connection with any one establishment on which products of the manufacturer, distributor or wholesaler are sold." (Emphasis added.)

Since K.S.A. 41-703 prohibits a manufacturer or distributor from selling, supplying, furnishing, giving, lending or leasing any furnishing, fixture or equipment to a retailer and, also, prohibits a manufacturer or distributor from furnishing, giving, loaning or renting any interior decorations or any signs for the retail establishment, and K.S.A. 41-702 prohibits a manufacturer or distributor from giving or lending "money or anything of value" to a licensed retailer, you question whether the rule and regulation, in fact, authorizes the transactions described above. If so, you question whether the rule and regulation conflicts with the statutes and, consequently, is invalid.

It is a settled principle of law that an administrative rule and regulation that authorizes activities prohibited by statute or that prohibits activities authorized by statute is illegal and void. See Capital Line Builders, Inc. v. Lennen, 232 Kan. 379 (1982); Woods v. Midwest Conveyor Co., 231 Kan. 763 (1982) and Wilcott v. Murphy, 204 Kan. 640 (1970). It, however, also is well-settled that an administrative rule and regulation must be read in conjunction with statutes concerning the same subject matter and is not to be construed to conflict with those statutes, if such can be avoided. See Lakeview Village, Inc. v. Board of Johnson County Comm'rs, 232 Kan. 711, 717 (1983). "An administrative rule and regulation must be construed in harmony with a statute relating to the same subject matter to the end that both may be given effect, if possible." Kansas Commission on Civil Rights v. City of Topeka Street Department, 212 Kan. 398, Syl. ¶5 (1973), cert. den. 414 U.S. 1066 (1973).

With the prohibition prescribed in K.S.A. 41-702 in mind, we are of the opinion that K.A.R. 1982 Supp. 14-10-1 cannot be construed as authorizing any transaction between a retailer and a manufacturer or distributor, such that the retailer receives any direct or indirect pecuniary benefit from the transaction. See State ex rel. v. Kansas Retail Liquor Dealers Foundation, Inc., 192 Kan. 293 (1963). Moreover, we also believe that this regulation cannot be construed as authorizing any transfer of furnishings, fixtures, or equipment

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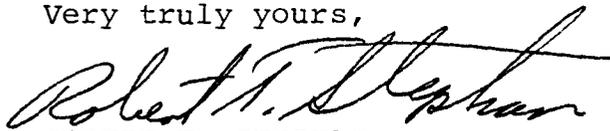
from a manufacturer or distributor to a retailer, or the sale of interior decorations or signs for any retail establishment, where the inadequacy of the consideration renders the transaction to be in violation of K.S.A. 41-702.

If the rule and regulation is interpreted as allowing distributors to sell to retailers only items that have no value in excess of the amount of consideration paid for them, and the items sold are not furnishings, fixtures or equipment, then the rule and regulation violates neither K.S.A. 41-702 nor 41-703.

Of course, in determining whether a distributor has sold an item to a retailer in violation of K.S.A. 41-702, 41-703 or K.A.R. 1982 Supp. 14-10-1, it is necessary to ascertain whether the item sold was a furnishing, fixture or item of equipment, and whether the item had value in excess of the amount paid therefor. The burden of making these determinations falls upon the Director of the Alcoholic Beverage Control Division. If a distributor disagrees with such determinations, the Kansas Liquor Control Act provides administrative and judicial review procedures. See K.S.A. 41-321 and 41-323.

Therefore, it is our opinion that K.A.R. 1982 Supp. 14-10-1 may be construed as permitting the sale of items, other than furnishings, fixtures or equipment, by distributors to retailers only in those instances where the item conveyed has no value in excess of the amount of consideration paid, and thus, the rule and regulation violates neither K.S.A. 41-702 nor 41-703.

Very truly yours,



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