



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

July 25, 1984

ATTORNEY GENERAL OPINION NO. 84- 74

The Honorable Ron Fox  
State Representative, 21st District  
4216 W. 73rd Terrace  
Prairie Village, Kansas 66208

The Honorable Donald E. Mainey  
State Representative, 57th District  
430 Sumner  
Topeka, Kansas 66616

Re: Taxation -- Cigarettes and Tobacco Products -- Sale or  
Distribution of Smokeless Tobacco Prohibited to  
Minors; Employment of Minors in Places where Such  
Items Sold

Synopsis: Section 3 of chapter 358 of the session laws of 1984 makes it unlawful for any person to sell or distribute smokeless tobacco to any person under the age of 18 years. Smokeless tobacco includes any tobacco product which is suitable for chewing, as defined by K.S.A. 79-3370. Unlike the cereal malt beverage laws at K.S.A. 41-2701 et seq., the new act contains no prohibition on either the possession of smokeless tobacco by persons under the age of 18 or the dispensing by minors of such products. Accordingly, it is not a violation of the law for a retailer who sells such products to employ minors who assist in the handling or sale of smokeless tobacco. Cited herein: K.S.A. 41-2708, K.S.A. 1983 Supp. 41-2721, K.S.A. 79-3370, L. 1984, ch. 358.

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Dear Representatives Fox and Mainey:

As state representatives you have independently requested our opinion on the application of a new law which became effective on May 3, 1984. Section 3 of chapter 358 of the session laws states that it shall be unlawful for any person to sell or distribute smokeless tobacco to any person under 18 years of age. In view of this prohibition, you inquire whether a retailer who sells smokeless tobacco may employ persons under 18, who would presumably assist in the sale or handling of the products.

In examining the plain wording of the act, we find nothing which states that it is unlawful for minors to possess smokeless tobacco products. This is in contrast to the cereal malt beverage laws, which make it an offense [at K.S.A. 1983 Supp. 41-2721(a)(3)] for a minor to possess cereal malt beverage. A prior opinion of this office, No. 82-86, furthermore construed even this statute so as to not prohibit minors from handling cereal malt beverages, as in the case of a store clerk stocking a refrigerator. "Possess," the opinion held, meant an intent to possess and an actual possession to the exclusion of others, which was not found in the casual handling of cereal malt beverage products under these circumstances. See also, State v. Neal, 215 Kan. 737 (1974) (possession of firearm); State v. Colson, 134 Kan. 147 (1931) (alcoholic liquor).

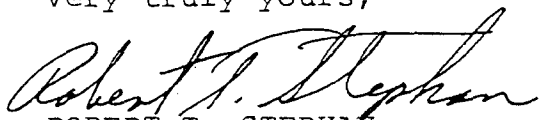
Likewise, we do not find anything in chapter 358 of the 1984 session laws which makes it unlawful for a retailer who sells smokeless tobacco products to employ minors who "dispense" such products. This may be contrasted with K.S.A. 41-2708(i), which makes such action by the holder of a retail cereal malt beverage license grounds for revocation or suspension of the license. In view of this language, Attorney General Opinion No. 82-86 concluded that minors could not in fact act as checkers in dispensing (i.e. selling) such beverages, even for off-premises consumption. However, as the smokeless tobacco act is silent on this point, we are not prepared to read into the statute that which is not expressly present, especially in light of the presence of criminal sanctions for violations. Criminal laws must be strictly construed against the state, and by their plain language must make explicit the prohibited conduct. State v. Stuart & Jones, 223 Kan. 600 (1978), State v. Fisher, 232 Kan. 760 (1983).

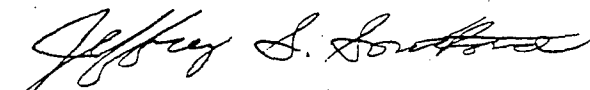
In conclusion, section 3 of chapter 358 of the session laws of 1984 makes it unlawful for any person to sell or distribute smokeless tobacco to any person under the age of 18 years. Smoke-

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less tobacco includes any tobacco product which is suitable for chewing, as defined by K.S.A. 79-3370. Unlike the cereal malt beverage laws at K.S.A. 41-2701 et seq., the new act contains no prohibition on either the possession of smokeless tobacco by persons under the age of 18 or the dispensing by minors of such products. Accordingly, it is not a violation of the law for a retailer who sells such products to employ minors who assist in the handling or sale of smokeless tobacco.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Jeffrey S. Southard  
Deputy Attorney General

RTS:JSS:crw