



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 11, 1984

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 84- 118

John A. Lamb
Director
Alcoholic Beverage Control Division
Department of Revenue
700 Jackson, 2nd Floor
Topeka, Kansas 66625

Re: Intoxicating Liquors and Beverages -- Licensing and
Related Provisions -- Persons Ineligible for Licenses;
Conviction of Crimes Opposed to Decency and Morality

Synopsis: K.S.A. 1983 Supp. 41-311(a)(7) provides that no person shall be eligible to obtain an intoxicating liquor license from the Alcoholic Beverage Control Division if he or she has been convicted of "being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality." When first used in 1949 (the year the statute was enacted), the reference to crimes opposed to decency and morality identified those offenses set forth in Chapter 21, Article 9 of the General Statutes of Kansas. Although the statutes detailing these offenses were redistributed in 1970 when the Kansas Criminal Code became effective, for any offense existing in 1949 it is possible to determine whether such crime was then considered to be against decency and morality. If so, the intent of the legislature in including such language in the provisions of K.S.A. 1983 Supp. 41-311(a)(7) should continue to be controlling. Cited herein: K.S.A. 21-3608; K.S.A. 1983 Supp. 41-311; G.S. 1949 21-901, 21-906, 21-907, 21-908, 21-915, 21-937, 21-954, 21-963 (all repealed by L. 1969, ch. 180, §21-4701), L. 1949, ch. 242, §27.

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Dear Mr. Lamb:

As Director of the Alcoholic Beverage Control Division of the Department of Revenue, you have requested our opinion on a question concerning a provision in the statute which sets forth those persons who are ineligible to obtain liquor licenses under K.S.A. 41-101, et seq., the Kansas Liquor Control Act. The statute, K.S.A. 1983 Supp. 41-311, includes among such persons [at subsection (a), paragraph (7)] anyone "[w]ho has been convicted or being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality." In that the phrase "crime opposed to decency and morality" is not defined elsewhere in the act, you wish to know which offenses are included within this language.

We believe an answer to your inquiry may be provided through an examination of the Kansas statutes as they existed in 1949, the year the Liquor Control Act was adopted. The above-quoted language in K.S.A. 1983 Supp. 41-311(a)(7) was contained in section 27 of the 1949 enactment (L. 1949, ch. 242), and has not been amended since that time. Although the 1949 enactment contained no definition of what offenses were opposed to decency and morality, the criminal statutes of the state at that time (Chapter 21, Article 9) contained a number of offenses which were identified as being against "public morals and decency."¹ It is a basic rule of statutory construction that when the legislature enacts a statute, it does so with the knowledge of other statutes which deal with the same subject matter. Szoboszlay v. Glessner, 233 Kan. 475 (1983). Further, statutes relating to the same subject matter, even though enacted at different times, are in pari materia and should be construed together. Clafin v. Walsh, 212 Kan. 1 (1973). Finally, it has long been held that when the legislature uses a word or phrase in one statute, and then employs the same language in a second enactment dealing with the same subject, the same meaning should be given to both. In Re County Seat of Linn County, 15 Kan. 500 (1875).

In our opinion, the 1949 Legislature used the phrase "crime opposed to decency and morality" in what is now K.S.A. 1983 Supp. 41-311(a)(7) with the intent to reference those offenses set forth in Chapter 21, Article 9, which crimes were labeled as being "against public morals and decency." Offenses placed therein included bigamy, incest, sodomy, adultery, gambling, prostitution, playing cards on Sunday and horse racing on public roads. [G.S.

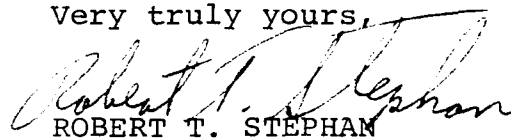
¹This classification was used in Kansas from the very earliest days of the state, for the General Statutes of 1868 also contained (at Chapter 31, Article 7) an identical heading for certain crimes.

1949 §§21-901, -906, -907, -908, -915, -937, -954, -963]. While a few of these offenses (such as the latter two) were de-criminalized following 1949 and so do not appear in the present criminal code, most were transferred during the re-codification that occurred in 1969-1970. Although they have now been divided among different articles within chapter 21 (e.g., Sex Offenses, Crimes Affecting Family Relations, Crimes Against the Public Morals, etc.), by means of the table of sections which appears prior to Chapter 21, Article 31, each of the original statutes can be located in the present-day criminal code.

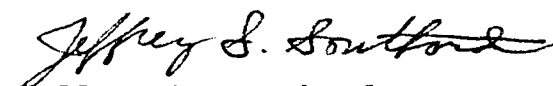
While the above procedure may be employed to locate those statutes which set forth crimes opposed to decency and morality, as of 1949, difficulties arise when more recent statutes are encountered. For example, the crime of endangering a child (K.S.A. 21-3608) dates only from 1969. While it is included in the same article with statutes whose antecedents were included in Chapter 21, Article 9 (such as incest and bigamy), it is unclear whether a court would now conclude that endangering a child constitutes a crime opposed to decency and morality. Clearly, the continued use of this archaic phrase in the Liquor Control Act needs to be re-considered, in view of the extensive changes which have taken place in the criminal statutes since 1949. Until such time as the legislature does so, we would advise your agency to limit its examination under this provision to those offenses which were classified as offensive to morals and decency as of that date.

In conclusion, K.S.A. 1983 Supp. 41-311(a)(7) provides that no person shall be eligible to obtain an intoxicating liquor license from the Alcoholic Beverage Control Division if he or she has been convicted of "being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality." When first used in 1949 (the year the statute was enacted), the reference to crimes opposed to decency and morality identified those offenses set forth in Chapter 21, Article 9 of the General Statutes of Kansas. Although the statutes detailing these offenses were redistributed in 1970 when the Kansas Criminal Code became effective, for any offense existing in 1949 it is possible to determine whether such crime was then considered to be against decency and morality. If so, the intent of the legislature in including such language in the provisions of K.S.A. 1983 Supp. 41-311(a)(7) should continue to be controlling.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General