



STATE OF KANSAS

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October 27, 1986

ATTORNEY GENERAL OPINION NO. 86- 150

John A. Lamb, Director
Alcoholic Beverage Control Division
Kansas Department of Revenue
700 Jackson Street, Jayhawk Tower
Topeka, Kansas 66612

Re: Intoxicating Liquors and Beverages -- General
Provisions -- Liquor-Filled Chocolates

Synopsis: The Kansas Liquor Control Act, as encompassed by Chapter 41 of the Kansas Statutes Annotated, regulates alcoholic liquor. Chocolate candy with a liquid liquor center constituting up to 5% alcohol by weight falls within the legal restrictions of the Act. Cited herein: K.S.A. 1985 Supp. 41-102; K.S.A. 41-105.

* * *

Dear Mr. Lamb:

As Director of Alcoholic Beverage Control for the State of Kansas, you request our opinion concerning the applicability of Chapter 41 of the Kansas Statutes Annotated, the Kansas Liquor Control Act (Act), to liquor-filled chocolates. The items in question are a solid chocolate shell encasing a liquid center, with the liquid center containing a measurable amount of alcohol. The labeling on the product states that the candies contain up to 5% alcohol by weight, or approximately 1/2 gram per 10 gram piece.

K.S.A. 1985 Supp. 41-102 states in part:

"(a) 'Alcohol' means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

"(b) 'Alcoholic liquor' means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than 3.2% alcohol by weight." (Emphasis added.)

In our opinion, the language of K.S.A. 1985 Supp. 41-102 includes the liquid alcoholic centers, as they would be "capable of being consumed as a beverage by a human being."

A beverage which contains a measurable amount of alcohol and which is not a cereal malt beverage is considered to be an alcoholic liquor. K.S.A. 1985 Supp. 41-102. Such beverages may be sold only in licensed retail liquor stores, and may be made subject to administrative rules and regulations which require the presence of a label or sticker which clearly identifies the beverage as alcoholic liquor under Kansas law. Attorney General Opinion No. 85-139.

Your opinion request indicated a concern regarding the emphasized portion of K.S.A. 41-105, which in its entirety states:

"None of the provisions of [the Kansas Liquor Control Act] shall apply: (1) To the manufacture of denatured alcohol produced in accordance with acts of congress and regulations promulgated thereunder; (2) to flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary or toilet preparations, or food products unfit for beverage purposes, but the provisions of this act shall not be construed to exclude or not apply to alcoholic liquor used in

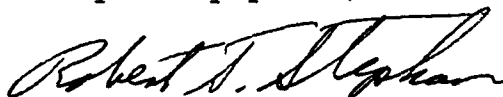
the manufacture, preparation or compounding of such preparations and products; or (3) to wine intended for use and used by any church or religious organization for sacramental purposes." (Emphasis added.)

A reading of the statute in its entirety reveals that the legislature intended to grant only specifically delineated exceptions to the Kansas Liquor Control Act. In our opinion, subsection (2) does not exempt these liquor-filled chocolates from the legal restrictions upon alcoholic liquor.

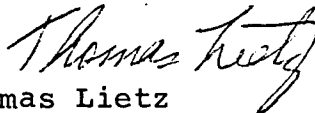
K.S.A. 41-105 exempts "food products unfit for beverage purposes." The items in question are a solid chocolate shell encasing a liquid center, with the liquid center containing a measurable amount of alcohol. The liquid alcoholic center is a beverage, contains a measurable amount of alcohol and is not a cereal malt beverage. Such a beverage is considered to be an alcoholic liquor. K.S.A. 1985 Supp. 41-102. Such beverages may be sold only in licensed retail liquor stores, and may be made subject to administrative rules and regulations which require the presence of a label or sticker which clearly identifies the beverage as alcoholic liquor under Kansas law. Attorney General Opinion No. 85-139.

In conclusion, the Kansas Liquor Control Act, as encompassed by Chapter 41 of the Kansas Statutes Annotated, regulates alcoholic liquor. Chocolate candy with a liquid liquor center falls within the legal restrictions of the Act.

Very truly yours,



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Comments of Attorney General Robert T. Stephan

Re: Lamb Opinion

October 28, 1986

This opinion was written to apply only to the particular liquor-filled chocolates which were in question. Under Kansas law, I believe each product which contains liquor as an ingredient must be examined on a case-by-case basis.

Any opinion contrary to the one I have issued would allow these chocolates with a liquid liquor center to be available in grocery stores, with no legal restrictions on the age of purchasers. By deciding this issue as I have, these liquor-filled chocolates will not be available for purchase by children. A decision to the contrary would have allowed for their purchase by children.