



STATE OF KANSAS

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September 15, 1987

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ATTORNEY GENERAL OPINION NO. 87- 136

Paul E. McPhillips
Garden Plain Mayor
505 North Main
P.O. Box 246
Garden Plain, Kansas 67050

Re: Intoxicating Liquors and Beverages--Cereal Malt
Beverages--Definition of "Premises"

Synopsis: K.S.A. 41-2701 et seq., as amended by L.
1987, ch. 182 and L. 1987, ch. 183, regulates the
sale and consumption of cereal malt beverages.
However, neither Article 27, nor any subsequent
amending legislation, contains a definition for
"premises." Therefore, since the consumption of
cereal malt beverages is not an area of concern
exclusively reserved by the state, a local
licensing authority may prescribe, within reason,
its own definition of what constitutes a
"premises." Cited herein: K.S.A. 41-2701, as
amended by L. 1987, ch. 182, §97; K.S.A. 41-2702,
as amended by L. 1987, ch. 182, §98; K.S.A.
41-2704, as amended by L. 1987, ch. 182, §100, and
by L. 1987, ch. 183, §4; K.A.R. 14-21-2.

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Dear Mr. McPhillips:

As Mayor of the City of Garden Plain, you have requested our
opinion regarding the definition of "premises" in respect to
Sunday sales of cereal malt beverages. Specifically, you
inquire as to whether a walk-up carryout with a picnic table

and a parking area, or a concession stand at a local softball park can obtain a license to sell cereal malt beverages for "consumption on the premises" in order to allow for Sunday sales of cereal malt beverages. You also inquire as to how the 30% food requirement, specified in L. 1987, ch. 183, §4, can be verified.

The sale and consumption of cereal malt beverages are regulated by K.S.A. 41-2701 et seq., as amended by L. 1987, ch. 182, and L. 1987, ch. 183. However, this is not an area of concern exclusively reserved by the state. City of Lyons v. Suttle, 209 Kan. 735, 738 (1972). Local governmental bodies are the actual licensing authorities. The procedure for obtaining a retailer's license to sell cereal malt beverages is set forth in L. 1987, ch. 182, section 98, which provides in part:

"K.S.A. 41-2702 is hereby amended to read as follows: 41-2702. (a) No retailer shall sell any cereal malt beverage without having first secured a license for each place of business as herein provided. In case such place of business is located within the corporate limits of a city ~~then~~, the application for license shall be made to the governing body of such city. In all other cases, the application for license shall be made to the board of county commissioners in the county in which such place of business is to be located, except that the application for license to sell on railway cars shall be made to the director as hereinafter provided. . . .

. . . .

"(c) An application for a retailer's license shall be verified and upon a form prepared by the attorney general of the state and shall contain:

"(1) The name and residence of the applicant;

"(2) the length of time that the applicant has resided within the state of Kansas;

"(3) the particular place of business
for which a license is desired;

"(4) the name of the owner of the
premises upon which the place of
business is located. . . ." (Emphasis
added.)

A definitional list of the terms used in this act is set forth
in K.S.A. 41-2701, as amended by L. 1987, ch. 182, section
97. Relevant portions of L. 1987, ch. 182, section 97 are:

"On and after January 1, 1988, K.S.A.
41-2701 is hereby amended to read as
follows: 41-2701. As used in this act
unless the context otherwise requires:

"(a) 'Cereal malt beverage' means any
fermented but undistilled liquor brewed
or made from malt or from a mixture of
malt or malt substitute, but does not
include any such liquor which is more than
3.2% alcohol by weight.

. . . .

" 'Retailer' means any person who
sells or offers for sale any cereal malt
beverage for use or consumption and not
for resale in any form.

" 'Place of business' means any
place at which cereal malt beverages are
sold."

This list, however, does not contain a definition for the term
"premises." It would therefore appear that, absent a
statutory definition for the term "premises," the local
governing body would be free to prescribe its own definition
for what constitutes a "premises." We note that the
definition should be reasonable in view of the common meaning
of premises. See The American Heritage Dictionary, New
College Edition 1034 (1976); Black's Law Dictionary 1063
(5th ed. 1979).

This means that the local licensing authority is free to
include the area surrounding the concession stand as part of
the "premises" or "place of business" in order to facilitate

the issuance of a "consumption on the premises" cereal malt beverage license for the softball park concession stand, or the walk-up carryout and surrounding area. However, if the entire softball park, for example, or a part of it is classified as the "premises," it should be noted that the licensee would then become responsible for complying with all other rules and regulations pertaining to retailers with "consumption on the premises" licenses. This would include, among other things, that, pursuant to L. 1987, ch. 183, §4(b)(3)(e), a cereal malt beverage licensee would be responsible for making sure that no person under the legal age for consumption of cereal malt beverages would be allowed to consume or possess cereal malt beverages in or about the "place of business," which would be the softball park.

The sale of cereal malt beverages on Sundays is authorized by L. 1987, ch. 183, §4, which provides in part:

"K.S.A. 41-2704, as amended by section 100 of 1987 House Substitute for Substitute for Senate Bill No. 141, is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the requirements of this act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

"(b) Except as provided by subsection (g), no cereal malt beverages may be sold:

"(1) Between the hours of 12:00 midnight and 6:00 a.m.;

"(2) on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises ~~and~~, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises. . . ."

In order for the walk up carryout or concession stand at the softball park to be able to sell cereal malt beverages for consumption on the premises on Sundays, the retailer would have to satisfy the 30% food sales requirement. K.S.A. 41-2701 et seq., as amended by L. 1987, ch. 182 and L. 1987, ch. 183, does not set forth a procedure for verifying the 30% food sales requirement. However, the Kansas Administrative Regulations do set forth procedures for verifying required food sales for those businesses which sell alcoholic liquors for consumption on the premises. Although these regulations are not binding upon cereal malt beverage licensees, they could be used as a guide by the governmental bodies that license cereal malt beverage retailers. An example is K.A.R. 14-21-2, as amended July 1, 1987, which describes the application and renewal process for drinking establishments:

"Applications and renewals' documents required. . . . Each application for a drinking establishment license shall be accompanied by the following documents and such other documents as the director may deem necessary:

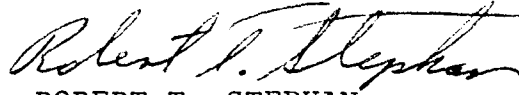
. . . .

"(i) a statement of gross receipts showing the ratio of food sales to alcoholic beverage sales are not less than 30%."

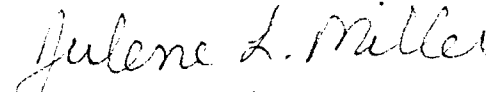
In conclusion, the sale and consumption of cereal malt beverages are regulated by K.S.A. 41-2701 et seq., as amended by L. 1987, ch. 182 and L. 1987, ch. 183. However, this is not an area of concern exclusively reserved by the state. Therefore, due to the absence of a statutory definition for the term "premises", the local licensing authority may prescribe its own definition for what constitutes a "premises." Thus, it is our opinion that if the governing body of the City of Garden Plain desires to do so, it may issue a "consumption on the premises" cereal malt beverage license to a walk-up carryout or a concession stand at a softball park. The issuance of this type of license would then allow the carryout or concession stand to sell cereal malt beverages on Sundays pursuant to L. 1987, ch. 183, §4, only if the carryout or concession stand derives not

less than 30% of its gross receipts from sale of food for consumption on the premises.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm