STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 159

Linda S. Trigg
Seward County Attorney
415 North Washington
Liberal, Kansas 67901

Re: Intoxicating Liquors and Beverages--Certain Prohibited Acts and Penalties--Consumption of Alcoholic Liquor Prohibited in Certain Places; Exceptions

Synopsis: The consumption of alcoholic liquor on unlicensed premises is prohibited in Kansas with certain exceptions. One such exception permits consumption on private property by the person owning or leasing that property and the person's guests, as long as "no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor" and no sale of alcoholic liquor is made in violation of K.S.A. 1987 Supp. 41-803. K.S.A. 1987 Supp. 41-719(b)(2), as amended. This exception would authorize the owner or lessee of private property to hold a banquet as a money-making project and serve alcoholic liquor at such function if no money charged for admission is used to defray the costs of providing the alcoholic liquor or mixes and the individuals admitted to the banquet are personally known to the owner/lessee of the premises. Cited herein: K.S.A. 1987 Supp. 41-719, as amended by L. 1988, ch. 165, §3; K.S.A. 1987 Supp. 41-803.

* * *

Dear Mrs. Trigg:

As Seward County Attorney you request our interpretation of K.S.A. 1987 Supp. 41-719(b)(2) as it applies to the following situation:

"A non profit organization holds a banquet as part of a money making project. The attendees of the banquet must pay for the meal by purchasing tickets for that function. The alcohol and mix that is served at the meal is donated by a friend or member and none of the ticket proceeds are paid to the friend or member and no consideration is paid to the friend or member. A commercial entity is donating the mix and it will be announced at the banquet that this commercial entity is the one who donated the mix."

You question first whether this would constitute a conditional sale of alcoholic liquor in violation of K.S.A. 1987 Supp. 41-719(b)(2), and second whether the fact that an individual is assessed an admission charge necessarily precludes him from being considered a "guest" under K.S.A. 1987 Supp. 41-719(b)(2).

The statute in question provides in pertinent part:

> "(b) No person shall drink or consume alcoholic liquor on private property except:
>
> . . . .
>
> "(2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto takes place. . . ." K.S.A. 1987 Supp. 41-719.

We assume that the property upon which the banquet is to be held is private property owned or leased by the non-profit organization.

In determining whether the distribution and consumption of "free beer" at a dance where a cover charge was required to

enter the premises was actually a conditional sale of cereal malt beverages, this office opined as follows:

> "[I]t is clear that a sale under these definitions only occurs when some part of the entrance fee paid by the dance participant goes to offset the cost of the beer being dispensed. When the 'free beer' is paid for by some part of the entry ticket, such that there is a direct relationship for payment of the beer, a sale as legally defined occurs. Hence a transfer of ownership of the property has occurred under these facts necessitating the acquisition of a retail license. When no part of the 'cover charge' is used to pay for the beer being consumed or to reimburse the funds from which the beer is purchased, or when the beer is contributed by a third party without receipt of consideration, then no transfer of ownership occurs for a price and hence no retail sale is consummated. Under these facts no retail license is required." Attorney General Opinion No. 80-52. See also Attorney General Opinion No. 84-51; VII Opinions of the Attorney General 652 (1971); V Opinions of the Attorney General 362 (1965).

While the above-cited opinions speak to the "sale" of cereal malt beverages, we believe the logic is applicable in determining whether alcoholic liquor is sold, conditionally or otherwise. Thus, if none of the admission charge collected is used to pay for the alcoholic beverages or "any substance mixed with any alcoholic liquor," the situation you describe would not be a conditional sale in violation of K.S.A. 1987 Supp. 41-719(b)(2). Further, such circumstances would not constitute a sale of alcoholic liquor in violation of K.S.A. 1987 Supp. 41-803.

The term "guest" is not defined in the liquor control act, K.S.A. 41-101 et seq., or the club and drinking establishment act, K.S.A. 41-2601 et seq. The Kansas Administrative Regulations promulgated by the Alcoholic Beverage Control Division of the Department of Revenue used to define "guest," for purposes of determining who could enter the premises of a private club accompanied by a member, as

requiring that the member be "acquainted with the guest and not be a total stranger before the time that the privilege of access is extended." K.A.R. 14-18-4 (as amended May 1, 1982). This provision was amended in 1987 to state:

> "To be a guest of a member, the two individuals shall have known each other for a significant period time measured in days, weeks or months prior to admittance to the club." K.A.R. 14-18-4, repealed May 1, 1988.

Though these provisions are no longer in force and applied only to licensed clubs, we believe they serve as a basis for interpreting K.S.A. 1987 Supp. 41-719(b)(2) as requiring that the "guest" be personally known to the "owner" prior to the time of admittance. See Attorney General Opinions No. 85-13, 84-51. Such an interpretation is necessary to prevent circumvention of state licensing requirements and operation of "open saloons" in dry counties. Thus, as long as tickets are sold only to individuals personally known to the "owner" of the premises, and not to the general public, the fact that admission is charged does not preclude such individuals from being "guests" as that term is used in K.S.A. 1987 Supp. 41-719(b)(2).

Very truly yours,

Robert T. Stephan

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RTS:JLM:jm