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ATTORNEY GENERAL OPINION NO. 90- 49

The Honorable Ben Foster
State Representative, Eighty-Fifth District
600 Longford Lane
Wichita, Kansas 67206

Re: Intoxicating Liquors and Beverages--Cereal Malt
Beverages--Hours and Days of Sale

Synopsis: Malt beverages containing any measurable amount of
alcohol, but not more than 3.2 percent, are cereal
malt beverages and may not be sold on Sunday except
as provided in K.S.A. 1989 Supp. 41-2704(b) and
(g). Cited herein: K.S.A. 1989 Supp. 41-102;
41-2701; 41-2704.

* * *

Dear Representative Foster:

You request our opinion regarding the authority of Kansas
grocery stores to sell "non-alcoholic" beers on Sunday. The
products to which you refer are beverages which are advertised
as containing less than one half of one percent (.5 percent)
alcohol by volume. It is our understanding that these
products are malt beverages.

K.S.A. 1989 Supp. 41-2704 provides in part:

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

. . . .

"(2) on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city;

. . . .

"(g) Cereal malt beverages may be sold on premises which are licensed pursuant to both the acts contained in article 27 of chapter 41 of the Kansas Statutes Annotated and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises." (Emphasis added).

Cereal malt beverage is defined at K.S.A. 1989 Supp. 41-2701(a) as:

"[A]ny 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."

This definition of cereal malt beverage does not have a minimum threshold of alcoholic content below which a beverage otherwise meeting the definition is not considered a cereal malt beverage. In other words, any beverage which is "fermented but undistilled liquor brewed or made from malt or a mixture of malt or malt substitute" is a cereal malt beverage no matter what percentage of alcohol by weight, as long as it is 3.2 percent or less. Thus, if the products in question are in fact undistilled liquor brewed or made from malt, and contain a measurable amount of alcohol by weight (but not more than 3.2 percent), they are cereal malt beverages and may not be sold on Sunday except in certain establishments licensed to sell cereal malt beverage for consumption on the premises and as provided by subsection (g)


of K.S.A. 1989 Supp. 41-2704. This opinion is consistent with prior decisions of the court and this office that every beverage containing any measurable amount of alcohol (exclusive of cereal malt beverage) is alcoholic liquor as defined by the Kansas liquor control act, K.S.A. 1989 Supp. 41-102(b). State v. Sleeth, 7 Kan.App.2d 203 (1982); Attorney General Opinion No. 85-139 (a product containing 0.2 percent alcohol by weight is an alcoholic liquor).

We note that legislation has been introduced to allow beer distributors, as defined in K.S.A. 1989 Supp. 41-102, to distribute, and retailers, clubs and drinking establishments and cereal malt beverage retailers to sell cereal malt beverages containing not more than .5 percent alcohol by volume. The provisions of the liquor control act, club and drinking establishment act or K.S.A. 41-2701 et seq., depending upon the retailer's license, shall apply to the retail sale of such beverages. 1990 Substitute for Senate Bill No. 765. This bill has passed out of the Senate committee on federal and state affairs, but has not yet been finally acted upon. This opinion does not address whether grocery stores may sell these beverages on Sunday should this bill pass.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
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RTS:JLM:jm