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ATTORNEY GENERAL OPINION NO. 91- 29

Thomas R. Powell
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455 North Main Street
Wichita, Kansas 67202-1635

Re: Intoxicating Liquors and Beverages--Certain
Prohibited Acts and Penalties--Location of Retail
Store, Microbrewery or Farm Winery; Restrictions

Synopsis: K.S.A. 1990 Supp. 41-710(c)(1) prohibits initial
licensure of a retail liquor store the premises of
which are located within 200 feet of a school or
church. The distance should be measured in a
straight line from the building sought to be
licensed as a retail liquor establishment to the
nearest property line of any neighboring school.
In the case of churches, the distance should be
measured in a straight line from the actual church
building to the building sought to be licensed.
This distinction is based on the regulatory
definition of "church" as a building; the term
"school" is not defined. Cited herein: K.S.A.
1990 Supp. 41-710, K.A.R. 14-3-2; 14-13-1; 14-3-2.

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Dear Mr. Powell:

As city attorney for the city of Wichita you have requested an
opinion regarding the location of retail liquor stores in
relation to school property. Specifically, you ask for our
interpretation of K.S.A. 1990 Supp. 41-710(c)(1) which

provides that "no retailer's license . . . shall be issued for premises which . . . are located within 200 feet of any public or parochial school or college or church." (This prohibition does not apply to schools or churches established after neighboring property has already been licensed; such premises remain eligible for a retail license.) You ask how this 200 foot requirement is to be measured -- whether from property line to property line, building to building, or a combination of the two.

The statute itself contains no explanation as to how the distance is to be measured. Unfortunately, the current administrative regulations merely mimic the language of the statute and thus are not helpful. K.A.R. 14-13-2(b)(8)(B)(11). K.A.R. 14-3-2, which interpreted K.S.A. 41-710(c)(1) to require measuring in a straight line from the closest point a the boundary of school property to the closest point of the premises sought to be licensed, was withdrawn by the division of alcoholic beverage control board in 1988.

Since K.S.A. 1990 Supp. 41-710 is clearly open to more than one interpretation, construction of the statute is required.

Appeal of Sterling Drilling Co., 9 Kan.App.2d 108

(1983). The primary rule of statutory construction is that the purpose and intent of the legislature be given effect when that intent can be ascertained. See, e.g., State ex rel. Stephan v. Kansas Racing Comm'n, 246 Kan. 708, 719

(1990). This intent can be determined by examining the purpose to be accomplished, necessity and effect of the statute, and the effect the statute may have under the various constructions suggested. Id. In construing a statute, legislative intent must also be determined from general consideration of the entire act. Id.

The purpose behind restricting liquor licenses from locations within a designated distance of certain places or institutions is to protect the institutions and general public from any detriment arising out of a liquor business, and to protect minors. 48 C.J.S. Intoxicating Liquors § 96 (1981); 45 Am.Jur.2d Intoxicating Liquors § 114 (1969). These restrictions should be liberally construed in favor of the regulations and the places or institutions which they were designed to protect, and strictly against the applicants for liquor licenses. 48 C.J.S. Intoxicating Liquors § 96 (1981); 45 Am.Jur.2d Intoxicating Liquors § 140 (1969).

It is well-established that the distances prescribed in statutes or regulations restricting the granting of liquor

licenses be measured along the shortest straight line, absent an express provision to the contrary. Annotation, Measurement of Distances for Purposes of Enactment Prohibiting Sale, or License for Sale, of Intoxicating Liquor within Given Distance From Church, University School or Other Institutions or Property as Base, 4 A.L.R.3d 1250 (1965). Because K.S.A. 41-710(c)(1) does not dictate a specific manner of measurement, e.g. by the usually traveled route or street lines, use of the shortest straight line method is in order.

The question of where the line to be measured should start and stop has been the subject of much more dispute among the jurisdictions. The "nearest points" of the buildings, the curb lines in front of the premises, even the front walls or entrances have been used as terminal points for measurement. 4 A.L.R.3d 1250. The majority rule appears to be that, absent an express statutory direction, the measurement should be from the property lines surrounding the protected institution. Id.; see, e.g., Davidson v. Lovett, 249 S.E.2d 61, 62 (Ga. 1978); Kaminski v. Illinois Liquor Control Comm'n, 314 N.E.2d 290 (Ill. 1974); Moschetti v. Liquor Licensing Auth., 490 P.2d 299 (Colo. 1971). This view is based on the presumption that the grounds are part of the institution. Whether this line is to be measured to the property on which the liquor store is situated or the building housing the store, has also been subject to controversy. However, the slight majority of courts have adopted the latter view. 4 A.L.R.3d 1250.

While the division's regulations do not specify the terminal points, they do define the term "church" as "building . . . used exclusively as a place for religious worship. . . ." K.A.R. 14-13-1(g). (Emphasis added). We thus believe the distance of a liquor store from a church must be measured from the actual church building. The regulations have altered what appears to be the general rule.

By contrast, the term "school" has not been defined. Given the nature of the institution -- students often receive instruction and congregate on school grounds --, the legislative intent to shield certain institutions from liquor stores and the absence of any statutory or regulatory direction, it is reasonable to assume that the term "school" as used in K.S.A. 41-710(c)(1) includes the surrounding premises in order to give maximum effect to the restriction. Courts in other jurisdictions considering statutes similar to K.S.A. 1990 Supp. 41-710(c)(1) have followed this approach. See, e.g., State ex rel. Woodruff v. Centanne, 89

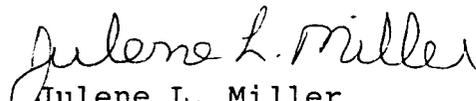
So.2d 570, 571-571 (Ala. 1956) ("schoolhouse" as used in liquor license restriction included school grounds); Smith v. Ballas, 82 N.E.2d 181, 183 (1948) (statute providing that no license shall be issued for sale at retail of any liquor within 100 feet of any "school" means within 100 feet of the school premises, and not within 100 feet of the school building).

Finally, we believe the distance should be measured to the building housing the liquor store rather than its property lines. K.S.A. 41-710(c)(1) refers to a license for premises. In Attorney General Opinion No. 74-46, this office stated that a liquor license applies to the actual building housing the establishment and not the real property upon which the building is located. We concur with this opinion, noting that "licensed premises" is defined as "those areas . . . in which the applicant will conduct the licensed business." K.A.R. 14-13-1(1).

Based on the authorities cited above, we conclude that the 200 foot requirement of K.S.A. 1990 Supp. 41-710(c)(1) should be computed in a straight line from the building sought to be licensed as a retail liquor establishment to the nearest property line of a neighboring school. In the case of a church, this line should be computed in a straight line from the actual church building to the building sought to be licensed as a retail liquor store.

Very truly yours,


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