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REPLY TO MANHATTAN OFFICE

February 2, 2015

Committee on Federal and State Affairs
Kansas House
Topeka, KS 66612

RE: House Bill 2088 -

Dear: Ladies and Gentlemen

Thank you for the opportunity to testify here today. I am here to testify in opposition to House Bill No. 2088, amending K.S.A. 41-106.

The Kansas Department of Revenue, Alcoholic Beverage Control Division, continues to interpret K.S.A. 41-106 incorrectly as it is written. ABC first incorrectly interpreted K.S.A. 41-106 to not require actual notice, by way of a citation, when a violation of the Kansas Liquor Control Act occurred. That incorrect interpretation was rectified by the Kansas Court of Appeals in the attached *Kite's* case. However, ABC continues to incorrectly interpret K.S.A. 41-106 to require a civil citation, when it is clear that is not what is required. Nowhere in K.S.A. 41-106 are the words "civil citation." Rather than amend the statute, ABC should adequately instruct police officers throughout the state of what the statute requires, and there would be no further issue for ABC.

K.S.A. 41-106, as it is written, requires a citation for a violation of the liquor control act or the club and drinking establishment act to be delivered to the person allegedly committing the violation at the time of the alleged violation. Further, it requires a copy of said citation to be mailed to the licensee within 30 days of the alleged violation. As the Kansas Court of Appeals pointed out in the *Kite's* case, "no one from ABC, or the investigating officer issued a citation to anyone at the time of the alleged violation in this case." It is clear from the language used that the Court of Appeals believes that the investigating officer, a Kansas law enforcement agent, could have issued a citation at the time of the occurrence. In that case, the alleged violation was a violation of K.S.A. 41-2615(a), for permitting the possession or consumption of alcoholic liquor by a minor on a licensed premises. K.S.A. 41-2615(b) indicates that a violation of the statute is a misdemeanor. Police officers in the State of Kansas have the authority to issue citations for misdemeanors. If a police officer sees a violation of the statute, issues a citation to the person allegedly committing the violation at the time, and sends it to ABC, the statute has been complied with.

The statute is written correctly for a number of reasons. First, Due Process requires notice to a person when it is alleged they have violated the law. K.S.A. 41-106, provides that Due Process. If a police officer alleges that a person has committed a violation of the liquor control act, or the club and drinking establishment act, the statute requires that officer to write a citation to the alleged offender so that person is put on notice that legal action may be taken. ABC's proposed amendment to the statute indicates that a civil citation may be given by an agent from ABC, or notice from an authorized law enforcement agent, to the licensee or licensee's agent or employee. The Due Process problem that is created by ABC's proposed amendments is that the licensee, or licensee's agent or employee, may have had nothing to do with the actual violation. If we cannot ensure the alleged violator is served with a citation, we cannot ensure that person will be given notice and his or her Due Process has been violated.

Next, the statute, as written, provides an opportunity for corrective measures to be taken by both the alleged violator, and the licensee. As the Court of Appeals pointed out in the *Kite's* case, "both of the specific notice requirements of K.S.A. 41-106 appear to be more helpful in regulating commerce in alcoholic liquor and prohibiting minors from consuming alcohol in bars and clubs than hindering its regulation. The issuance of a citation at the time of the violation gives immediate notice to the violator and/or the licensee that there has been in fact a violation of the law. It then affords the licensee an opportunity to immediately take corrective steps to fix the violation and thus more likely to limit the continuation of any violations. The failure to issue a citation at the time of the violation could very possibly allow the violations to continue for as long as 30 days..." Again, it is not hard to imagine a police officer providing the notice which ABC is asking for to an employee of the licensee, and the actual violator not having any notice that a violation has allegedly occurred.

ABC's proposed amendment to K.S.A. 41-106 is needless legislation. When a police officer follows the wording of the statute, writes a citation for an alleged violation at the time of the alleged violation, and forwards that citation to ABC so it can provide notice to the licensee, the statute's requirements have been met, and ABC can impose sanctions on the licensee. It seems a rather straight-forward proposition. There is no need to amend K.S.A. 41-106.

Very truly yours,

JEREMIAH L. PLATT,
For the firm.